

Department of Legislative Services
 Maryland General Assembly
 2023 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 459 (Senators M. Washington and Carter)
 Judicial Proceedings

Correctional Services - Restrictive Housing - Limitations (Maryland Mandela Act)

This bill requires training for all personnel involved in the supervision and care of individuals placed in restrictive housing and for hearing officers, as specified, and establishes requirements and limitations relating to the placement of an individual in restrictive housing. By December 1 each year, the Department of Public Safety and Correctional Services (DPSCS) must report to the General Assembly on the steps the department has taken relating to restrictive housing and disciplinary segregation, as specified. **Except for requirements relating to training of personnel and hearing officers, the bill’s provisions take effect January 1, 2024.**

Fiscal Summary

State Effect: General fund expenditures increase by *at least* \$8.0 million in FY 2024; future years are annualized, adjusted for inflation, and reflect minimum ongoing costs. Revenues are not affected.

(\$ in millions)	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	8.0	13.6	14.2	14.8	15.6
Net Effect	(\$8.0)	(\$13.6)	(\$14.2)	(\$14.8)	(\$15.6)

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

Local Effect: Potential significant increase in expenditures for local correctional facilities. Revenues are not affected. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: None.

Analysis

Bill Summary:

Training Requirements: Beginning October 1, 2023, all personnel involved in the supervision and care of individuals placed in restrictive housing must complete at least 40 hours of training, including training on trauma-informed care, before being assigned to a restrictive housing unit, and must receive at least eight hours of additional training annually. Also beginning October 1, 2023, a hearing officer must complete at least 40 hours of training, including training on trauma-informed care, the physical and psychological effects of restrictive housing, procedural and due process rights of incarcerated individuals, and restorative justice remedies, prior to presiding over any hearings, and must receive at least eight hours of additional training annually. These provisions may not be construed to limit overtime compensation for personnel and hearing officers required to attend training under the bill.

Limitations on the Use of Restricted Housing: Beginning January 1, 2024, a vulnerable individual, as defined in the bill, may not be placed in restrictive housing. In addition, an individual may not be placed in restrictive housing based solely on (1) confidential information considered by the facility staff, but not provided to the incarcerated individual or included in required records; (2) gang or enemy affiliation; or (3) protection of the individual from another, as specified.

An incarcerated individual may not be placed in restrictive housing for more than three consecutive days unless the Commissioner of Correction or the commissioner's designee issues a written decision following an evidentiary hearing, as specified. In addition, an incarcerated individual may not be subject to administrative segregation for more than 15 days in a 365-day period or placed in restrictive housing for more than 60 days in a 365-day period.

If an incarcerated individual fears for the individual's safety, the facility must transfer the individual to more appropriate housing other than restrictive housing, as specified, with full access to out-of-cell time, programming, and other services available to the rest of the detained population.

Restraints may not be used on an incarcerated individual placed in restrictive housing, in the process of being placed in or released from restrictive housing, or being moved or transported to or from restrictive housing for the purposes of recreation, programs, or other services, unless the facility has documented that such restraints are required due to an extraordinary and unacceptable risk of imminent physical harm to the safety or security of incarcerated individuals or staff.

An inmate's base file or institutional record may not include a notation regarding placement of the inmate in administrative segregation or protective custody if the notation would serve to interrupt the inmate's programming eligibility, parole considerations, security status changes, or other opportunities.

An incarcerated individual who has been found guilty of an infraction that is included in any infraction category other than the most serious category is subject to, for a first infraction, no more than a verbal warning. An incarcerated individual found guilty of an infraction included in the most serious infraction category is subject to:

- for a first infraction, not more than 15 days of disciplinary segregation every 90 days; and
- for a second infraction, not more than 30 days of disciplinary segregation every 90 days.

If an individual was held in administrative segregation for an investigative, protective, or preventive reason during the investigation of an infraction included in the most serious infraction category allegedly committed by the individual, the cumulative time that the individual may be held in both administrative and disciplinary segregation may not exceed 15 days for a first infraction and 30 days for a second infraction.

Requirements for the Use of Restricted Housing: The managing official of a correctional facility must ensure that each incarcerated individual placed in restrictive housing receives notice, in a language or manner the individual can understand, within 24 hours of the individual's placement in restrictive housing. The notice must include specified information regarding the facts and circumstances regarding the placement, monitoring procedures, court dates and the appeal process, and copies of relevant documents, as specified.

A facility must conduct an external visual check on an individual involuntarily placed in restrictive housing at least twice per shift. In addition, the individual must be assessed by a medical or mental health professional within 24 hours of placement and by a mental health professional every 48 hours thereafter. However, if the individual is demonstrating unusual behavior or has indicated suicidality or self-harm, the facility must monitor the individual every 15 minutes, or more frequently if recommended by a medical or mental health professional.

For an incarcerated individual in restrictive housing, the correctional facility must:

- provide weekly comprehensive physical and mental health assessments by a multidisciplinary staff committee consisting of at least one licensed mental health

professional, at least one medical professional, and at least one member of the management of the facility;

- provide the same services and access that are provided to incarcerated individuals not in restrictive housing, as specified;
- offer programming led by program or therapeutic staff comparable to the programming offered to incarcerated individuals not in restrictive housing; and
- offer at least four hours of out-of-cell programming per day, as specified, including at least one hour for recreation, as specified.

Before an incarcerated individual's move to restrictive housing or as soon as possible after, the managing official or designee must make the decision to remove any personal items from the individual or to restrict the individual's access to programs or services while in restrictive housing.

Use of Restrictive Housing for Medical Purposes: Subject to specified limitations and requirements, including written approval by a licensed physician or nurse practitioner, an incarcerated individual may be placed in segregated housing for medical purposes; however, the individual must be allowed to participate in programs and services, subject to considerations of the health and security of the individual, other incarcerated individuals, facility staff, visitors, and the public.

Administrative Hearings: An incarcerated individual must be provided the opportunity to contest the restrictive housing placement in an administrative hearing within 72 hours of the initial placement and every 15 days thereafter, in the absence of exceptional circumstances, unavoidable delays, or reasonable postponements. If an individual is placed in restrictive housing due to emergency circumstances, a review hearing must be conducted as soon as possible after the initial placement. The incarcerated individual has the right to appear and be represented by an attorney or advocate of the individual's choosing and at the individual's own expense at all required hearings.

If an individual in restrictive housing disputes a decision made by a facility staff member or facility medical professional regarding the individual's status as a vulnerable individual, the individual may request and receive a secondary review of the determination by the managing official or chief physician, as appropriate. An incarcerated individual may not be placed or retained in restrictive housing if, following a secondary review, the managing official or chief physician determines that the individual no longer meets the standard for confinement.

Required Reports: Each correctional facility must create and post to the facility's website a monthly report stating the total number of individuals held in restrictive housing in the preceding month, the length of time those individuals have been held in restrictive housing, and demographic information for those individuals, including age, race, and gender.

By December 1 each year, DPSCS must report to the General Assembly on the steps the department has taken to:

- improve the conditions of confinement in restrictive housing by allowing opportunities for out-of-cell time and congregate activity, providing incarcerated individuals in restrictive housing daily outdoor recreation time, and creating more opportunities for productive in-cell activities;
- limit the number of violations that are eligible for disciplinary sanctions;
- eliminate restrictive housing sanctions for minor violations;
- create de-escalation spaces and establish a system that allows incarcerated individuals in restrictive housing to access those spaces for meaningful periods of time;
- create, in coordination with each incarcerated individual entering restrictive housing, strategies designed to return the individual to the general population in the least amount of time; and
- amend policies to specify that disciplinary segregation is a sanction of last resort.

Definitions: “Administrative segregation” means a nonpunitive form of restrictive housing that removes an individual from the general population of the correctional facility for (1) investigative, protective, or preventive reasons resulting from a substantial and immediate threat or (2) transitional reasons, including a pending transfer, pending classification, or other temporary administrative matter.

“Disciplinary segregation” means a form of physical separation imposed in response to an individual being found guilty by a hearing officer of violating department rules, institutional rules, or both.

“Protective custody” means custodial conditions provided to an incarcerated individual at the request of the incarcerated individual or through a staff determination that the incarcerated individual requires protection.

“Residential rehabilitation unit” means separate housing used for therapy, treatment, and rehabilitative programming as an alternative to restrictive housing for incarcerated individuals or for incarcerated individuals who require separate housing following their placement in restrictive housing.

“Restrictive housing,” as modified by the bill, means any form of housing that separates incarcerated individuals from the general prison population or that imposes restrictions on programs, services, interactions with other incarcerated individuals, or other conditions of confinement. “Restrictive housing” includes: (1) administrative segregation; (2) disciplinary segregation; and (3) residential rehabilitation units, if separate housing is

used for therapy, treatment, and rehabilitative programming. Generally, “restrictive housing” does not include a residential rehabilitation unit.

“Serious mental illness” means a mental disorder that:

- is manifest in an individual at least age 18;
- is diagnosed, according to a current diagnostic classification system recognized by the secretary, as schizophrenic disorder, major affective disorder, another psychotic disorder, or borderline or schizotypal personality disorder, excluding an abnormality that manifests only as repeated criminal or otherwise antisocial conduct;
- is characterized by impaired function on a continuing or intermittent basis for at least two years; and
- includes at least three of the following: (1) inability to maintain employment; (2) social behavior that results in interventions by the mental health system; (3) inability to procure financial assistance to support living in the community due to cognitive disorganization; (4) severe inability to establish or maintain a personal support system; or (5) need for assistance with basic living skills.

“Vulnerable individual” means an individual who:

- is younger than age 26 or at least age 55;
- has a developmental disability;
- has been identified as having a serious mental illness;
- has a serious medical condition that cannot effectively be treated in isolated confinement;
- is pregnant, is in the postpartum period, or has recently suffered a miscarriage or terminated a pregnancy;
- has a significant auditory or visual impairment; or
- identifies as or is perceived as lesbian, gay, bisexual, transgender, gender nonconforming, or intersex.

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 and 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.

To the extent possible, the Commissioner of Correction may not prohibit an inmate placed in restrictive housing from having access to a reentry specialist or case manager within 180 days before the inmate is released to the community.

A minor may not be placed 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: DPSCS advises that in fiscal 2022, there were nearly 12,000 placements in restrictive housing. DPSCS has taken several measures in recent years to reduce the number of inmates in restrictive housing; however, DPSCS and the Office of Administrative Hearings (OAH) advise that to meet the bill’s requirements, a significant number of additional staff is needed. As a result, general fund expenditures increase by *at least* \$8.0 million in fiscal 2024, which accounts for the bill’s January 1, 2024 effective date for the relevant requirements. Future year expenditures increase to \$15.6 million by fiscal 2028.

Department of Public Safety and Correctional Services

General fund expenditures for DPSCS increase by *at least* \$7.8 million in fiscal 2024, which accounts for the bill’s January 1, 2024 effective date for the relevant requirements. This estimate reflects the cost of hiring 34 professional counselors, 17 correctional psychologists, 31 case managers, 60 correctional officers, and 16 contractual activity therapists to (1) conduct the required monitoring and assessments; (2) provide the same services and access that is provided to other incarcerated individuals not in restrictive housing; and (3) provide escorts and supervision for participation in required hearings. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Regular Positions	142.0
Contractual Positions	16.0
Salaries and Fringe Benefits (Regular)	\$6,181,941
Salaries and Fringe Benefits (Contractual)	453,690
Equipment/Operating Expenses	<u>1,128,752</u>
Minimum FY 2024 DPSCS Expenditures	\$7,764,383

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

This estimate does not include costs for the following, as they cannot be reliably estimated at this time:

- any necessary construction or renovation to existing correctional facilities in order to meet the bill’s requirements to provide specific types of spaces at all facilities, including single cells and sensitive needs yards; and

- implementation of the required training beginning October 1, 2023, including any overtime necessary for approximately 4,000 correctional officers.

It also does not include any health insurance costs that could be incurred for specified contractual employees under the State’s implementation of the federal Patient Protection and Affordable Care Act.

Office of Administrative Hearings

General expenditures for OAH increase by *at least* \$259,007 in fiscal 2024, which accounts for the bill’s January 1, 2024 effective date for the relevant requirements. This estimate reflects the cost of hiring three administrative law judges and one docket clerk to conduct the required *initial* hearings under the bill. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses, including travel.

Positions	4.0
Salaries and Fringe Benefits	\$227,431
Travel Expenses	3,000
Other Operating Expenses	<u>28,576</u>
Minimum FY 2024 OAH Expenditures	\$259,007

This estimate does not include any costs for the required training of hearing officers beginning October 1, 2023. In addition, the estimate assumes that each administrative law judge handles approximately 1,000 *initial* hearings annually; it does not address the potential need for additional staff to address subsequent hearings. To the extent that OAH is unable to handle the additional workload stemming from the bill with four additional positions, general fund expenditures increase further.

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

Local Expenditures: Local expenditures increase, potentially significantly, in some counties for local correctional facilities to provide the required training and to provide staff and security necessary to meet the bill’s numerous requirements. Baltimore and Frederick counties advise that overtime expenses increase due to the required training. Montgomery County reports the need for additional staff positions to coordinate and manage policy review and changes and for implementation of requirements that cannot be operationally absorbed with current positions.

Additional Information

Prior Introductions: Similar legislation has been introduced within the last three years. See HB 851 of 2021; and SB 1002 and HB 742 of 2020.

Designated Cross File: HB 385 (Delegate Bartlett) - Judiciary.

Information Source(s): Baltimore, Frederick, Montgomery, and Somerset counties; Maryland Association of Counties; Department of Juvenile Services; Department of Public Safety and Correctional Services; Office of Administrative Hearings; Department of Legislative Services

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Analysis by: Shirleen M. E. Pilgrim

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