

Department of Legislative Services
 Maryland General Assembly
 2024 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 1085 (Senator M. Washington, *et al.*)
 Judicial Proceedings

Corrections - Segregated Housing - Limitations

This bill requires training for all personnel in State correctional facilities involved in the supervision and care of individuals placed in restrictive housing and for hearing officers, as specified, and establishes numerous requirements and limitations relating to the placement of an individual in restrictive housing. In addition, the bill modifies and expands existing provisions that require (1) each correctional unit to provide specified data on restrictive housing to the Governor’s Office of Crime Prevention and Policy (GOCPP) and (2) GOCCP to make that information available on its website and submit in a report to the General Assembly.

Fiscal Summary

State Effect: General fund expenditures for the Department of Public Safety and Correctional Services (DPSCS) increase by *at least* \$11.6 million in FY 2025; future years are annualized, adjusted for inflation, and reflect minimum ongoing costs. Reimbursable fund revenues and expenditures for the Office of Administrative Hearings (OAH) increase by an indeterminate amount, as discussed below.

(\$ in millions)	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
ReimB. Rev.	-	-	-	-	-
GF Expenditure	\$11.6	\$13.7	\$14.3	\$14.9	\$15.6
ReimB. Exp.	-	-	-	-	-
Net Effect	(\$11.6)	(\$13.7)	(\$14.3)	(\$14.9)	(\$15.6)

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

Local Effect: Local correctional facilities can likely handle the bill’s expanded reporting requirements with existing resources, as discussed below. Revenues are not affected.

Small Business Effect: None.

Analysis

Bill Summary:

Training Requirements: All personnel involved in the supervision and care of individuals placed in restrictive housing must (1) complete at least 16 hours of training, including training on trauma-informed care, before being assigned to a restrictive housing unit and (2) receive at least four hours of additional training annually. Also, a hearing officer must (1) complete at least eight 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 (2) receive at least four 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: A vulnerable individual, as defined in the bill, may not be placed in restrictive housing unless (1) the vulnerable individual is at least age 18 years old and younger than age 26 or has a serious mental illness and (2) the managing official and the chief physician of the correctional facility have determined, and recorded in writing the reasons for determining, that the individual presents a grave risk of harm to the individual or others and restrictive housing is the only means of ensuring the safety of the individual or others from the risk of harm presented by the individual.

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; (3) protection of the individual from the rest of the detained population or a likely abuser; or (4) the incarcerated individual's identified or perceived sexual orientation or gender identity.

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 restraints are required because of high risk of physical harm to the individual or others.

Requirements for the Use of Restrictive Housing: The managing official of a correctional facility must ensure that each incarcerated individual placed in restrictive housing is provided specified notice and information, in a language or manner the individual can understand, within 24 hours of the individual's placement in restrictive housing. Among other things, that information must include notice of the facts and circumstances regarding the individual's placement in restrictive housing, monitoring procedures the facility will

employ, and an explanation of the process to appeal the initial or continued placement of the individual in restrictive housing.

An incarcerated individual must also (1) be provided the opportunity to contest the restrictive housing placement in an administrative hearing within 70 hours of the initial placement and (2) have the right to appear and be represented by an attorney or advocate of the individual's choosing at the individual's own expense.

If an individual in restrictive housing disputes a decision made regarding the individual's status as a vulnerable individual or the placement of the individual in restrictive housing, the individual may request and receive a secondary review of the determination by the managing official or chief physician, as appropriate. However, 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.

Generally, an incarcerated individual may not be subject to restrictive housing for more than 3 consecutive days or 6 days in any 60-day period. However, if the Commissioner of Correction or the commissioner's designee issues a written decision, following an evidentiary hearing, that states specified determinations based on specific objective criteria, the incarcerated individual may be placed in restrictive housing for up to 15 consecutive days, 18 days in any 60-day period, or 60 days in any 365-day period.

An incarcerated individual in restrictive housing must be given a physical and mental health assessment within at least 24 hours of the initial placement in restrictive housing and every 24 hours thereafter. The physical and mental health assessment must be performed by at least one licensed mental health professional, at least one medical professional, and at least one member of the management of the facility. In addition, an incarcerated individual in restrictive housing:

- must have access to educational and reading materials, online educational programming that the individual was enrolled in prior to being placed in restrictive housing, and case management, clergy, and mental health professionals;
- may not be subject to imposition of any change in diet as a form of punishment; and
- must be offered at least four hours of out-of-cell programming per day, as specified; however, time spent on housekeeping or in paid employment may not be considered out-of-cell programming.

The decision to remove any personal items or clothing from an incarcerated individual placed in restrictive housing must be (1) made by the managing official or designee of the managing official before the incarcerated individual's transfer to restrictive housing or as

soon as possible after the transfer and (2) based on a determination that the item or clothing poses a significant and unreasonable risk of harm to the individual or others.

A facility must conduct an external visual check of an individual placed in restrictive housing at least twice per shift. In addition, if an individual placed in restrictive housing demonstrates behavior that is unusual, suicidal, or indicates a likelihood of self-harm, the facility staff must monitor the individual at least every 15 minutes, or more frequently if recommended by a medical or mental health professional.

Use of Segregated Housing for Medical Purposes: An incarcerated individual may be placed in segregated housing for medical purposes only if the individual is kept in the segregated housing for the shortest amount of time required to reduce the risk of infection, the placement is in accordance with State and federal public health guidance, and a licensed physician or nurse practitioner has provided written approval of the placement. However, an incarcerated individual placed in segregated housing for medical purposes 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.

Accommodations for Safety: If an incarcerated individual notifies the staff of the correctional facility that the individual fears for the individual's safety and requests an accommodation to facilitate the individual's safety, the facility must transfer the individual, within a reasonable amount of time, but not longer than three days, after receiving the request to an appropriate accommodation, including transfer to (1) a single cell; (2) a different section of the facility; (3) a sensitive needs yard; or (4) another correctional facility that can meet the safety needs of the individual if the managing official of the correctional facility determines that an accommodation in items (1) through (3) listed above is unavailable or cannot adequately meet the safety needs of the individual. After such placement, an incarcerated individual may submit a written request to the facility staff at any time to be returned to the general population of the correctional facility, and after receipt of the written request, the facility staff must promptly, but not later than 24 hours after receipt of the written request, return the incarcerated individual to the general population of the correctional facility.

Restrictive housing is not an appropriate accommodation for an individual who makes a request relating to individual's safety. An individual placed in an accommodation pursuant to these provisions must be granted full access to out-of-cell programming and other services available to the rest of the detained population, and the placement may not be noted in the incarcerated individual's base file or institutional record, as specified.

Administrative Segregation and Disciplinary Segregation: An incarcerated individual placed in administrative segregation or disciplinary segregation must have the same access

to programming, work assignments, recreational activities, and visitation as the population of the correctional institution that is not segregated.

Annual Data and Report on Restrictive Housing: The bill expands the data that each correctional unit must provide to GOCCP – and that GOCCP must make available on its website and submit in a report to the General Assembly under current law – to include:

- information on vulnerable individuals with serious mental illnesses placed in restrictive housing; and
- steps taken to (1) improve the conditions of confinement in restrictive housing, as specified; (2) limit the number of violations that may result in sanctions; (3) create de-escalation spaces, as specified; (4) create strategies designed to return the individual to the general population in the least amount of time, as specified; (5) amend policies to specify that restrictive housing is a sanction of last resort; and (6) adopt the use of residential rehabilitation units.

In addition, the data submitted under these provisions, as modified by the bill, must be disaggregated by age, race, gender, classification of housing, and basis for placement.

Definitions: “Administrative segregation” means a nonpunitive form of physical separation of an incarcerated individual from the general population of a correctional facility for a period of 17 hours or less out of a 24-hour period.

“Disciplinary segregation” means a punitive form of physical separation of an incarcerated individual from the general population of a correctional facility for a period of 17 hours or less out of a 24-hour period.

“Residential rehabilitation unit” means separate housing used for therapy, treatment, and rehabilitative programming (1) as an alternative to restrictive housing for an incarcerated individual or (2) for an incarcerated individual who requires separate housing following placement in restrictive housing.

“Restrictive housing” is modified to mean any form of physical separation in which an incarcerated individual is placed in a locked room or cell for more than 17 hours out of a 24-hour period. (The definition no longer includes administrative segregation and disciplinary segregation, as the bill defines those terms separately.)

“Serious mental illness” means a mental disorder that:

- is diagnosed, according to a current diagnostic classification system recognized by the Secretary of Public Safety and Correctional Services, as (1) schizophrenic disorder; (2) major affective disorder; (3) another psychotic disorder; or

- (4) 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) severe inability to establish or maintain a personal support system; or (4) need for assistance with basic living skills.

“Vulnerable individual” means an individual who, because of age, identity, status, disability, or circumstances, may be particularly susceptible to criminal victimization and may face special challenges in interactions with other incarcerated individuals.

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 incarcerated individuals 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 incarcerated individual 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 incarcerated individual 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 incarcerated individual’s status; and (5) maintenance of supervision records of specified activities and occurrences.

“Administrative segregation” means a form of physical separation of an incarcerated individual from the general population determined by the classification process or authorized personnel when the continued presence of an incarcerated individual in the general population would pose a serious threat to (1) life; (2) property; (3) self; (4) staff or other incarcerated individuals; (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 incarcerated individual found guilty at a disciplinary hearing is confined apart from the general population for a designated period of time.

DPSCS regulations also address discipline of incarcerated individuals. An incarcerated individual who commits a rule violation is subject to the incarcerated individual disciplinary process of the department. Sanctions for incarcerated individual rule violations include (1) placement of an incarcerated individual on disciplinary segregation;

(2) revocation of good conduct and special projects credits; (3) suspension of incarcerated individual 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 incarcerated individual rule violation and disciplinary hearing on the incarcerated individual, and a shift commander may isolate the incarcerated individual if the incarcerated individual poses a threat to security.

Following a hearing, and upon a determination of guilt, a hearing officer may permit the defendant incarcerated individual or, if represented, the defendant incarcerated individual'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 incarcerated individual placed in restrictive housing from having access to a reentry specialist or case manager within 180 days before the incarcerated individual is released to the community.

Chapter 526 of 2019 prohibits 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 incarcerated individuals, or staff or to the security of the facility.

By December 31 each year, each correctional unit must submit data to GOCPP showing, by correctional unit:

- the total population of the correctional unit;
- the number of incarcerated individuals who have been placed in restrictive housing during the preceding year by age, race, gender, classification of housing, and the basis for the incarcerated individual's placement in restrictive housing;
- the number of incarcerated individuals with serious mental illness that were placed in restrictive housing during the preceding year and the definition of "serious mental illness" used by the unit in making the report;

- the number of incarcerated individuals 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 incarcerated individuals placed in restrictive housing during the preceding year;
- the number of incidents of death, self-harm, and attempts at self-harm by incarcerated individuals in restrictive housing during the preceding year;
- the number of incarcerated individuals released from restrictive housing directly into the community during the preceding year;
- any other data the correctional unit 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 unit relating to the use and conditions of restrictive housing, including steps to reduce reliance on restrictive housing.

GOCPP must make the submitted information available on its website and, as specified, submit the information in a report to the General Assembly.

“Restrictive housing” means a form of physical separation that has not been requested by the incarcerated individual in which the incarcerated individual 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 Fiscal Effect: According to the latest [report](#) on restrictive housing, between October 1, 2021, and September 30, 2022, there were approximately 21,000 total instances of restrictive housing placement. DPSCS has taken several measures in recent years to reduce the number of incarcerated individuals in restrictive housing; however, DPSCS advises 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* \$11.6 million in fiscal 2025, which accounts for the bill’s October 1, 2024 effective date. Future year expenditures are annualized, adjusted for inflation, and reflect minimum ongoing costs. In addition, reimbursable fund revenues and expenditures increase for OAH as cases are referred by DPSCS to OAH under the bill, as discussed below.

Department of Public Safety and Correctional Services

General fund expenditures for DPSCS increase by *at least* \$11.6 million in fiscal 2025, which accounts for the bill’s October 1, 2024 effective date. This estimate reflects the cost of hiring 55 correctional officers, 34 professional counselors, 31 case managers, 17 correctional psychologists, 11 program managers, and 16 contractual activity therapists to (1) conduct the required monitoring and assessments; (2) provide the same services and

access 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	148.0
Contractual Positions	16.0
Salaries and Fringe Benefits (Regular)	\$9,761,155
Salaries and Fringe Benefits (Contractual)	680,347
Equipment/Operating Expenses	1,189,984
Minimum FY 2025 DPSCS Expenditures	\$11,631,486

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:

- costs to reimburse OAH to adjudicate cases referred by DPSCS, as discussed below;
- 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, 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

OAH reimbursable fund revenues and expenditures increase as additional cases are referred by DPSCS and adjudicated. Agencies pay OAH on a per-case basis to cover costs associated with adjudication. According to OAH, the Department of Budget and Management estimates that such costs total approximately \$4,958 per case. Any such impact, however, depends on the number of cases referred under the bill and cannot be reliably estimated at this time.

OAH advises that it needs to hire additional staff to handle the cases referred by DPSCS under the bill. Because the number of such cases is unknown, the number of additional administrative law judges and docket clerks that may be needed cannot be reliably estimated at this time. *For illustrative purposes*, if OAH needs to hire three administrative law judges and one docket clerk, costs increase by approximately \$370,000 in fiscal 2025,

with costs increasing to approximately \$506,000 by fiscal 2029. OAH also incurs costs to train hearing officers, as required by the bill.

Governor's Office of Crime Prevention and Policy

GOCPP advises that it needs one part-time contractual administrative position to gather the required information for the annual report, at a cost of approximately \$34,000 in fiscal 2026, increasing to approximately \$39,000 by fiscal 2029. While the Department of Legislative Services acknowledges that GOCPP may need staff if the volume of additional information received is significant, without actual experience under the bill, the need for additional staff is unclear.

Local Expenditures: Although the requirements and limitations relating to the placement of individuals in restrictive housing and training only apply to State correctional facilities, local correctional facilities are required to report additional information relating to the use of restrictive housing. The reporting requirements can likely be completed with existing resources; however, to the extent that local correctional facilities alter existing restrictive housing practices to meet the reporting requirements and match practices for State correctional facilities, local expenditures increase.

Additional Comments: DPSCS advises that online educational opportunities are not available within State correctional facilities regardless of the housing assignment of an incarcerated individual.

Additional Information

Recent Prior Introductions: Similar legislation has been introduced within the last three years. See SB 45, SB 459, and HB 385 of 2023.

Designated Cross File: HB 1144 (Delegate Phillips, *et al.*) - Judiciary.

Information Source(s): Baltimore, Carroll, Harford, Queen Anne's, and St. Mary's counties; Governor's Office of Crime Prevention and Policy; Department of Juvenile Services; Department of Public Safety and Correctional Services; Office of Administrative Hearings; Department of Legislative Services

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km/lgc

Analysis by: Shirleen M. E. Pilgrim

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