



Department of Public Safety and Correctional Services

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BILL: HOUSE BILL 131

POSITION: LETTER OF INFORMATION

EXPLANATION: This bill proposes to establish a “step-down program” for offenders who have been placed in restrictive housing and who are within 180 days of returning to the general population or release. It further requires the Commissioner of Correction to document in writing why an inmate did not participate in a step-down program; and allows a former inmate to file a civil action for direct injury from a denial of the right to access a step-down program. **This bill will have a significant fiscal and operational impact on the Department of Public Safety and Correctional Services’ (DPSCS) Division of Correction (DOC) and the Division of Pretrial Detention and Services (DPDS).**

COMMENTS:

- DOC operates approximately 17 State correctional facilities, which house offenders sentenced to incarceration for 18 months and longer. DPDS houses pretrial detainees and inmates sentenced to incarceration for 18 months and less. Offenders at both the DOC and DPDS may be placed in restrictive housing.
- HB 131 will require the Commissioner of Correction provide a step down program to an inmate before the inmate is transferred from restrictive housing to the general population or the direct release of an inmate from a facility to the community.
- For those inmates and detainees committed to the DPDS, it is the Commissioner of the DPDS that maintains said jurisdiction. The bill places onus with the Commissioner of Correction, who does not have authority for those inmates in DPDS.
- In January 2020, DPSCS signed a Memorandum of Understanding (MOU) with the American Correctional Association (ACA) to accredit all of our correctional facilities. Accreditation requires adherence to the performance based standards manual, *Performance- Based Standards and Expected Practices for Adult Correctional Institutions* (5th ed.).

This includes comprehensive best practices concerning restrictive housing developed as the result of five years of comprehensive national research and community input. This bill would conflict with the Department's MOU and the ACA process as these performance standards evolve over time.

- Currently, when an inmate is placed in restrictive housing for disciplinary reasons, notification as to why, for how long, and appeal rights are provided to the inmate in accordance with COMAR 12.03, *Inmate Disciplinary Process*. After placement, a multi-disciplinary team reviews the placement. For both the disciplinary placement and the administrative placement, the inmate must sign an acknowledgment of receipt of the placement authorization.
- ACA in their publication, *Performance-Based Standards and Expected Practices for Adult Correctional Institutions* (5th ed.), recommends a step down process for inmates who are returning to a general population from restrictive housing that includes a multidisciplinary approach including:
 - Pre-screening evaluation;
 - Monthly evaluations using a multidisciplinary approach to determine the inmate's compliance with program requirements;
 - Utilization of monthly evaluations to gradually increase out-of-cell time, gradually increasing group interaction, gradually increasing education and programming opportunities, and gradually increasing privileges;
 - A step down review compliance review; and,
 - A post-screening evaluation.
- The step down program stipulated under HB 131 requires that it be individualized to the needs of the inmate and involve a multidisciplinary treatment approach to include mental health practitioners and counselors, licensed social workers, activity therapists, medical staff as well as correctional staff.
- Implementation of HB 131 will require the DOC to create dedicated units at each facility operating a restrictive housing unit. The mandated services will have to be conducted either on the restrictive housing unit or at specifically designated locations within each facility capable of separating the segregated inmates from the general population to insure the safety and security of the staff, inmate, and the facility. DPDS will be required to do the same. The DOC estimates that to provide a step-down program at each of its facilities to meet the mandates under the bill cost over **\$2.7 million** in staffing.

- In accordance with current policies and procedures, every time an inmate is removed from restrictive housing, up to a two-man escort is needed per inmate, to ensure the safety and security of the staff and facility, but also to ensure the safety and security of the inmate. Once the detainee arrives at the location to which he or she is being escorted, the officer(s) must stay with the inmate. **The projected fiscal impact to DPSCS is over \$2.6 million for additional correctional officers.**
- HB 131 will substantially affect the fiscal operation of DPSCS in the provision that provides for an aggrieved inmate who seeks redress by legal remedy and recovery of court costs if DPSCS fails to satisfy the provisions set forth in § 9-614.2. Being that clear and convincing evidence is the threshold that must be met for the Department to prevail; determining such evidence existed prior to the denial of access to the step-down unit will be left to the courts. Until the court has decided whether or not the Commissioner has met its burden, the cost to the Department and the Attorney General's office will be substantial in preparing to defend its position.
- It is important to keep in mind that the Department is still facing a global health crisis. The Department enacted over 50 policies and procedures over the past nine months. Limiting movement within the correctional facilities was a key COVID-19 prevention and mitigation strategy. A lesson learned from the current COVID-19 pandemic is the need for flexibility in operations. The practices mandated in HB 131 would restrict the Department's ability to evolve and implement nationally recommended best practices.
- The Department's policies, practices, and procedures continue to change and evolve as science and evidence based national best practices change and improve over time. This bill would create a statutory mandate on an area in the criminal justice system that is similarly subject to change. It is imperative the Department's operations have the ability to remain nimble based on the ever-changing framework of the criminal justice arena.

CONCLUSION: The Department of Public Safety and Correctional Services respectfully requests the Committee consider this information as it deliberates on House Bill 131.