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BILL: SENATE BILL 977

POSITION: LETTER OF INFORMATION

EXPLANATION: Senate Bill 977 requires the Commissioner of Correction (Commissioner) 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 being released. It further requires the Commissioner to document in writing why an incarcerated individual did not participate in a step-down program; the bill also allows a former incarcerated individual 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’ Division of Correction (DOC) and the Division of Pretrial Detention and Services (DPDS).**

COMMENTS:

- The crossfile of this bill, HB 67 passed the House with amendments. As amended, the bill prohibits the Commissioner from allowing an incarcerated individual on restrictive housing access to a Reentry Specialist or Case Manager within 180 days of release from a correctional facility.
- HB 67 as amended resolves the concerns of the Department of Public Safety and Correctional Services (Department) and will have no fiscal or operational impact.
- SB 977 as introduced will have a significant fiscal and operational impact on the Department.

Restrictive Housing Usage Summary

- The Department is obligated to submit annual reports that provide a detailed breakdown of placements on restrictive housing. Reports for fiscal years 2016 - 2021 can be accessed at:
<http://goccp.maryland.gov/reports-publications/by-other-agencies/>

- In preparing the Department's reports for fiscal years 2020 and 2021, the Department's Office of Data Development made an alteration to the methodology utilized to track restrictive housing that was based on improvements in tracking. This alteration prompted a review/update of prior years' data and determined:
 - Restrictive housing usage is 60% lower than previous estimates; and,
 - Disciplinary segregation is 1/4 lower than previous estimates.
- Highlights from the FY 21 Report on Restrictive Housing:
 - In FY 2021, the Department decreased its usage of restrictive housing (disciplinary and administrative segregation) by 15.6%.
 - Disciplinary segregation decreased 22% from FY 20 and the placement length has fallen by 3.2 days.
 - Restrictive housing is not utilized with pregnant women.
 - The median length of stay is 30 days on any restrictive housing.
 - Not all facilities have restrictive housing.
 - The Department has reduced the average length of disciplinary segregation placements by nearly 48% in three years.

Information on Impact of SB 977

- HB 977 will require the Commissioner to provide a step down program to an incarcerated individual before the individual is transferred from restrictive housing to the general population or is directly released to the community.
- Currently, 11 of the 13 DOC facilities house Administration and Disciplinary Segregation and the Department has an existing policy requiring a segregation review board for each facility that houses segregation individuals.
- Currently, when an incarcerated individual 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.
- 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 that were 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 and specifying restrictive housing practices legislatively would prohibit the Department from modifying the program without legislative involvement.
- The ACA in their publication, *Performance-Based Standards and Expected Practices for Adult Correctional Institutions* (5th ed.), recommends a step down process for incarcerated individuals 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 incarcerated individual'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 SB 977 requires that it be individualized to the needs of the incarcerated individual 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 SB 977 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 individuals from the general population to ensure the safety and security of the staff, incarcerated individual, 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 that meet the mandates of the bill will cost over **\$2.7 million** in staffing.
- In accordance with current policies and procedures, every time an incarcerated individual is removed from restrictive housing, up to a two-man escort is needed per individual to ensure the safety and security of the staff and facility, but also to ensure the safety and

security of the incarcerated individual. Once the individual arrives at the location to which he or she is being escorted, the officer(s) must stay with the individual. **The projected fiscal impact to DPSCS is over \$2.6 million for additional correctional officers.**

- SB 977 will substantially affect the fiscal operation of DPSCS in the provision that provides for an aggrieved individual 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 operating during a global pandemic. The Department enacted over 50 policies and procedures over the past 23 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 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 urges the Committee to consider conforming Senate Bill 977 to the crossfile, HB 67 that passed the House.