



**Testimony for the House Judiciary Committee
March 08, 2023**

SB 459 - Correctional Services - Restrictive Housing - Limitations (Maryland Mandela Act)

FAVORABLE

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The ACLU of Maryland urges a favorable report on SB 459, which would set reasonable limitations on the use of restrictive housing in Maryland while requiring training for hearing officers and personnel involved with the supervision and care of individuals placed in restrictive housing.

Maryland has years of data detailing the overuse and misuse of restrictive housing

The General Assembly has ample data, showing the over usage of restrictive housing, to begin implementing substantive limits on the use of restrictive housing.

In 2010, the Department of Public Safety and Correctional Services (DPSCS) and the Vera Institute of Justice conducted a collaborative study that found that Maryland placed 8.5% of inmates in restrictive housing, compared with the national average of 4-5%.¹

In 2015, DPSCS reported to the Senate Judicial Proceedings Committee that Maryland's use of restrictive housing remained at about 8%.² The letter also revealed that the average length of stay in administrative segregation is 130 days. The average length of stay in disciplinary segregation is 124 days.³ Mentally ill inmates fared worse—they are placed in restrictive housing at a rate of 15.5% (twice that of the general population), and spend on average 228 days in administrative segregation and 224 days in disciplinary segregation.⁴ According to the U.N. Special Rapporteur on Torture, the mentally ill should never be placed in isolation.⁵

In 2016, under the reporting law passed by this body (SB 946, 2016) DPSCS again reported its overuse of restrictive housing. That report showed that in FY 16, 68% of Maryland's

¹ See attached excerpt of the Report of the Vera Institute of Justice—Segregation Reduction Project.

² Letter from Stephen T. Moyer, Secretary of the Department of Public Safety and Correctional Services to Hon. Bobby A. Zirkin, Re: Use of Segregated Confinement in Maryland's correctional facilities (dated Oct. 1, 2015).

³ *Id.*

⁴ *Id.*

⁵ Interim Report of the Special Rapporteur of the Human Rights Council on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. A/66/268 (August 5, 2011), par. 78.

prison population was placed in restrictive housing at some point in 2016.⁶ Moreover, the average length of stay in restrictive housing was 58 days.⁷

The 2017 report showed a significant uptick in these statistics—in FY17, 73% of all prisoners were placed in restrictive housing and DPSCS made 814 more placements in restrictive housing.⁸

A 2021 report showed a 5.7-day net increase in the length of stay in restrictive housing despite a slight drop in usage.⁹ It is therefore clear that Maryland overuses restrictive housing.

Overuse of restrictive housing is unsafe

Normal human contact is essential for ensuring successful re-entry and reducing recidivism rates. Prolonged isolation does not facilitate rehabilitation and can create or exacerbate pre-existing mental illnesses and other social, mental, and emotional problems. People held in restrictive housing are subject to conditions of extreme social and sensory deprivation. Deleterious effects of segregated confinement include perceptual distortions and hallucinations;¹⁰ revenge fantasies, rage, and irrational anger;¹¹ and lower levels of brain function, including a decline in EEG activity after only seven days in solitary confinement.¹² Significantly, people released directly from solitary confinement into the community have higher recidivism rates.¹³

Restrictive housing is not a panacea for safety

Other jurisdictions have reduced the use of restrictive housing without compromising prison safety. After Maine cut solitary in half between 2010 and 2012 there was no increase in prison violence.¹⁴ According to a 2014 study published by the Federal Bureau of Prisons,

⁶ Maryland Department of Public Safety and Correctional Service, Report on Restrictive Housing – Fiscal Year 2016 (December 2016).

⁷ *Id.*

⁸ Maryland Department of Public Safety and Correctional Service, Report on Restrictive Housing – Fiscal Year 2017 (December 2017).

⁹ Maryland Department of Public Safety and Correctional Service, Report on Restrictive Housing – Fiscal Year 2021 (December 2021).

¹⁰ Craig Haney, *Mental Health Issues in Long-Term Solitary and “Supermax” Confinement*, 49 CRIME & DELINQ. 124, 130 (2003); see generally Richard Korn, *The Effects of Confinement in the High-Security Unit at Lexington*, 15 Soc. Just. 8 (1988).

¹¹ Holly A. Miller & Glenn R. Young, *Prison Segregation: Administrative Detention Remedy or Mental health Problem?*, 7 CRIM. BEHAV. & MENTAL HEALTH 85, 91 (1997); see generally HANS TOCH, *MOSAIC OF DESPAIR: HUMAN BREAKDOWN IN PRISON* (1992).

¹² Paul Gendreau, N.L. Freedman, G.J.S. Wilde & G.D. Scott, *Changes in EEG Alpha Frequency and Evoked Response Latency During Solitary Confinement*, 79 J. OF ABNORMAL PSYCHOL. 54, 57-58 (1972).

¹³ See David Lovell, “Patterns of Disturbed Behavior in a Supermax Population,” *Criminal Justice and Behavior* 35 (2008): 9852; David Lovell, L. Clark Johnson, and Kevin C. Cain, “Recidivism of Supermax Prisoners in Washington State,” *CRIME AND DELINQUENCY* 53 (2007): 633-656; and David Lovell and Clark Johnson, “Felony and Violent Recidivism Among Supermax Inmates in Washington State: A Pilot Study” (University of Washington, 2004).

¹⁴ Change Is Possible: Solitary confinement destroys lives, ACLU of Maine, available at <http://www.aclumaine.org/changeispossible>.

“States that have reduced segregation populations have found no adverse impact on institutional safety.”¹⁵

In 2013, the U.S. GAO also reported jurisdictions that have reduced the use of restrictive housing saw no adverse impact on safety—

After implementing segregated housing unit reforms that reduced the number of inmates held in segregation, officials from all five states we spoke with reported *little or no adverse impact on institutional safety*.¹⁶ (emphasis added)¹⁷

For the foregoing reasons, the ACLU of Maryland urges a favorable report on SB 459.

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¹⁵ Federal Bureau of Prisons: Special Housing Unit Review and Assessment (Dec. 2014) (http://www.bop.gov/resources/news/pdfs/CNA-SHURreportFinal_123014_2.pdf)

¹⁶ United States Government Accountability Office, Report to Congressional Requesters (2013) evaluating the impact of segregated housing (Pp. 34-35 state).

¹⁷ The GAO report further detailed that, “While these states have not completed formal assessments of the impact of their segregated housing reforms, officials from all five states told us there had been no increase in violence after they moved inmates from segregated housing to less restrictive housing.” *Id.*