

Department of Legislative Services
Maryland General Assembly
2026 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 268

(Senator Henson)

Judicial Proceedings

**Correctional Services – Restrictive Housing – Individuals With Developmental or
Intellectual Disabilities**

This bill authorizes an applicable “clinical professional,” during the intake assessment for a new incarcerated individual, to assess the incarcerated individual for a “developmental disability” or an “intellectual disability.” Based on the assessment, the clinical professional may recommend to the correctional facility that the incarcerated individual should not be placed in “restrictive housing” for more than 15 consecutive days in a 30-day period. If a clinical professional makes such a recommendation, the correctional facility may not place an incarcerated individual in restrictive housing for more than 15 consecutive days in a 30-day period. This limit on restrictive housing does not apply to an incarcerated individual who commits a “prohibited act.” The bill’s provisions only apply to a State correctional facility.

Fiscal Summary

State Effect: The Department of Public Safety and Correctional Services (DPSCS) can handle the bill’s changes with existing budgeted resources. Revenues are not affected.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: “Clinical professional” means an individual who is trained and licensed in mental health.

“Developmental disability” means a severe chronic disability of an individual that:

- is attributable to a physical or mental impairment, other than the sole diagnosis of mental illness, or to a combination of mental and physical impairments;
- is manifested before the individual attains the age of 22;
- is likely to continue indefinitely;
- results in an inability to live independently without external support or continuing and regular assistance; and
- reflects the need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are individually planned and coordinated for the individual.

“Intellectual disability” means a developmental disability that is evidenced by significantly subaverage intellectual functioning and impairment in the adaptive behavior of an individual.

“Prohibited act” includes:

- causing or attempting to cause serious physical injury to or death of another person;
- making an imminent threat of serious physical injury or death to another person when (1) the individual making the threat has a history of causing physical injury or death and (2) the Commissioner of Correction reasonably determines that there is a strong likelihood that the person will carry out a threat of serious physical injury or death;
- compelling or attempting to compel another person, by force or threat of force, to engage in a sexual act;
- extorting another, by force or threat of force, for property or money;
- coercing another, by force or threat of force, to violate a rule;
- leading, organizing, inciting, or attempting to cause a riot, an insurrection, or any other similarly serious disturbance that results in the taking of a hostage, major property damage, or physical harm to another person;
- procuring deadly weapons or other dangerous contraband that pose a serious threat to the security of the institution; and
- escaping, attempting to escape, or facilitating an escape from a correctional facility or escaping or attempting to escape while under supervision outside a correctional facility.

“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. “Restrictive housing”

includes administrative segregation and disciplinary segregation. “Restrictive housing” does not include (1) medical isolation; (2) mental-health observation or crisis stabilization; (3) suicide watch; (4) protective custody requested by the incarcerated individual; or (5) quarantine or public-health isolation.

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 324 of 2019 prohibits, with specified exceptions, the involuntary placement of a pregnant incarcerated individual in restrictive housing and sets forth requirements for when a pregnant incarcerated individual is placed in restrictive housing. Each correctional facility must have a written policy in place regarding the medical care of pregnant incarcerated individuals that addresses the use of involuntary medical isolation or restrictive housing for administrative, protective, or disciplinary purposes during pregnancy and eight weeks during the postpartum or post-pregnancy recovery period.

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 the Governor's Office of Crime Prevention and Policy (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. The definition applies to both State and local correctional facilities.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 310 (Delegate Kaufman, *et al.*) - Judiciary.

Information Source(s): Department of Public Safety and Correctional Services; Department of Legislative Services

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