

Department of Planning and Budget 2021 Special Session I - Fiscal Impact Statement

1. Bill Number: SB1301 ES1

House of Origin Introduced Substitute Engrossed

Second House In Committee Substitute Enrolled

2. Patron: Morrissey

3. Committee: Rehabilitation and Social Services

4. Title: Correctional facilities; use of isolated confinement.

5. Summary: The proposed legislation requires the superintendent, warden, or persons in charge of a correctional facility to place prisoners in isolated confinement only for purposes of providing medical and mental health treatment. The bill defines isolation confinement as confinement of a prisoner or juvenile to a cell, alone or with another prisoner or juvenile, for 20 hours or more per day for an adult or for 17 hours or more per day for a juvenile, other than for the purpose of providing medical or mental health treatment.

The bill defines a medical practitioner to mean a physician, physician's assistant, or nurse practitioner licensed to practice medicine in the Commonwealth or in the jurisdiction where the treatment is to be rendered or withheld. The bill provides that confinement to a cell must be done in a manner that is consistent with the signed recommendations of a medical practitioner and within a clinical area in the correctional facility or in as close proximity to a medical or mental health unit as possible. In addition to setting up certain procedures, the bill requires that each person held in isolation receives an initial medical and mental health evaluation within eight hours of placement in isolated confinement.

If it is determined that the prisoner continues to pose an ongoing and realistic threat of imminent physical harm to another person after 48 hours of isolated confinement, the prisoner may be retained in isolated confinement for an additional 48 consecutive hours, or longer if necessary to complete the investigation of an incident. The bill also requires, in addition to documentation, that the facility administrator ensure that the prisoner receives an additional medical and mental health evaluation within eight hours of decision to retain the prisoner in isolation.

In situations where there is a facility-wide lockdown and isolation is required of some prisoners for safety reasons, then such prisoners may be placed in isolated confinement provided that the facility administrator documents in writing specific reasons why any lockdown lasting for more than 24 hours is necessary, and why less restrictive interventions are insufficient to accomplish the facility's safety goals. It also requires a review of voluntary and involuntary placements every 48 hours.

The bill provides for exceptions for when isolated confinement may be permitted in juvenile correctional centers. A juvenile cannot be placed in isolated confinement for longer than 24 hours. Juveniles must receive initial medical and mental health evaluations within four hours of placement in isolation confinement and follow-up evaluations at least every four hours. If it is determined that the juvenile continues to pose an ongoing and realistic threat of imminent physical harm to another person after 24 hours of isolated confinement, the juvenile may be retained in isolated confinement for no more than an additional 24 consecutive hours.

The bill requires the Directors of the Department of Corrections and the Department of Juvenile Justice to develop policies and procedures, and submit proposed regulations, to effectuate the provisions of this section.

The provisions of this act become effective on July 1, 2022.

6. **Budget Amendment Necessary:** Yes, Items 400 and 423.
7. **Fiscal Impact Estimates:** Preliminary. See item 8 below.
8. **Fiscal Implications:** Currently, the Department of Corrections (DOC) utilizes Restrictive Housing defined as, “a placement that requires an inmate to be confined to a cell at least 22 hours per day for the safe and secure operation of the facility.” Restrictive housing is used for personal protection or custodial management of offenders. For the purposes of this fiscal impact statement, it is assumed that “isolated confinement” is the same as the DOC’s definition of “restrictive housing.”

The DOC operates restrictive housing units at security level 2 through 5 facilities. Security level 1 facilities and Deerfield Correctional Center do not have restrictive housing units but do have temporary holding cells, which are used to isolate inmates only when necessary. The DOC estimates that there is an average of approximately 400 offenders in restrictive housing units system-wide on any given day for a variety of reasons consistent with current policies and procedures.

The substitute bill requires that each prisoner kept in isolated confinement must receive an initial medical and mental health evaluation within eight hours of placement in isolated confinement. The substitute bill provides that if a facility administrator finds that the prisoner continues to pose an ongoing and realistic threat of imminent physical harm to another person after 48 hours of isolated confinement, the prisoner may be retained in isolated confinement for an additional 48 consecutive hours or longer if necessary to complete the investigation of an incident. In these cases, the bill requires that the prisoner receives an additional medical and mental health evaluation within eight hours of a decision to retain the prisoner in isolated confinement.

Medical Evaluations

The term “initial evaluation” is not defined in the bill and, according to DOC, an evaluation may require a more comprehensive analysis of an inmate’s medical condition than DOC’s

screening currently offers. Currently, DOC requires a screening by medical staff before placing an inmate in restrictive housing to determine if such placement is contraindicated. This screening includes reviewing the prisoner's medical chart to determine if there are any medical conditions that would prevent the offender's placement into restrictive housing. If an inmate is placed in restrictive housing after the initial screening, weight and vital signs are monitored periodically, including during daily rounds conducted by medical staff.

However, in order to provide any level of medical evaluation within eight hours of placement in restrictive housing, pursuant to the bill, DOC believes it would need to have medical staff available 24 hours per day, seven days per week in each facility. DOC believes that the initial evaluation would likely be conducted by a medical provider (defined in the bill as a licensed physician, physician's assistant, or nurse practitioner).

The DOC reports that sick call volume has increased dramatically as a result of the COVID-19 pandemic along with the agency's 2020 decision to suspend the requirement for a copayment from any inmate seeking an appointment. According to DOC analysis, inmate medical appointments have risen from an average of 4,690 when the copayment was required to 12,353 inmate medical appointments after the copayment was eliminated. The DOC reports that the number of medical staff the agency employs at this time is not adequate to handle the current sick-call workload and the additional services that would be required by this bill.

Therefore, DOC believes that in order to provide the required medical evaluations within the time required by the bill, the agency would need additional medical staff including up to 44 Registered Nurses, providing additional nurse coverage for day, evening, and weekend shifts in each of DOC's facilities, at a cost of \$89,310 (including salary and benefits) for each position. Total cost for the additional nurse positions is approximately \$3.9 million annually. DOC also believes that it would need to expand its tele-medicine services to provide physician-level supervision for the evaluations. DOC estimates that eleven tele-medicine contract physicians at a cost of approximately \$4.1 million annually would be required to achieve this 24 hours per day, seven days per week coverage statewide.

Mental Health Evaluations

Currently, at facilities with restrictive housing, the Mental Health Services unit uses a graduated approach with a level of monitoring and intervention based on clinical assessment of offenders' current needs and risks. Currently, all major facilities have Psychology Associates assigned to work on-site who interview the offender within one working day after placement in a restrictive housing unit. The current screening process used by DOC is in accord with American Correctional Association standards, in line with current clinical practice and evidence-based literature. The current process includes a mental status assessment of the inmate to address specific behaviors and symptoms exhibited by the inmate, the inmate's mental health/treatment history, and scores on certain risk assessments, etc.

The bill provides that confinement to a cell must be done in a manner that is consistent with the signed recommendations of a medical practitioner and within a clinical area in the

correctional facility or in as close proximity to a medical or mental health unit as possible. The DOC's licensed mental health units are located at Fluvanna Correctional Center, State Farm Enterprise Unit, Marion Correctional Treatment Center, and Greensville Correctional Center, providing a total of 548 beds. The DOC's mental-health inpatient units are located at Marion Correctional Treatment Center and Fluvanna Correctional Center for Women.

According to DOC, it would not be feasible to move all inmates with mental health issues closer to these licensed units, as currently 30 percent of DOC's inmates have some degree of mental health issues. If DOC were directed to expand the number of licensed mental health beds to accommodate these inmates in a licensed mental health unit setting, approximately nine prisons would need to be designated as mental health facilities. The cost of a conversion of this magnitude cannot be determined at this time.

Further, as with the medical evaluation requirement, the bill does not define the term "initial evaluation." It is not clear if the DOC's mental health assessment/interview would meet the bill's intention.

The bill also defines a medical practitioner to mean a physician, physician's assistant, or nurse practitioner licensed to practice medicine in the Commonwealth or in the jurisdiction where the treatment is to be rendered or withheld. The DOC currently employs six licensed doctoral-level clinical psychologists, who serve in supervisory positions at headquarters and regional offices, and eleven doctoral-level clinicians who work at facilities. The balance of DOC's Psychology Associates are master's-degree-level practitioners who staff most of DOC's major facilities. DOC reports that its current mental health staff work eight-hour shifts, five days per week and that mental health staff also are available on an on-call basis around the clock. Each working day, mental health staff provide core services to inmates, conduct rounds, and investigate and respond to inmate, family, and other requests, referrals, complaints, and grievances. Mental health staff also provide referrals for psychiatry, and/or further psychological or medical evaluation.

In order to provide any mental health assessment within eight hours of placement in restrictive housing, DOC believes it would need to have staff available 24 hours per day, seven days per week. The DOC reports that its existing staff level is not adequate to handle the current mental health workload plus the evaluations required by this bill, particularly if the evaluations would have to be conducted by licensed and/or doctoral-level practitioners. Therefore, in order to provide adequate coverage, DOC reports that it would need up to 27 additional psychologists, providing an additional Psychology Associate at each of DOC's major facilities, at a cost of \$97,193 for each position, and up to six psychiatrists, at a cost of \$342,912 for each position. Position costs shown include salary and benefits. Total cost for these positions is approximately \$4.7 million annually. It is possible that the psychiatric supervision could be provided via tele-medicine services; a cost estimate for this option is not currently available.

Protective Custody

Under DOC's current policy, offenders in a restrictive housing unit who are classified as requiring separation from other offenders as a result of their personal security needs would be

reviewed for transfer to a Protective Custody Unit. These units are currently housed at Red Onion and Sussex II state prisons.

The bill allows an offender to request to be placed in isolated confinement for his own protection; the facility then must bear the burden of establishing a basis for refusing the request. In addition, before placing a prisoner in isolated confinement for his own protection, the bill requires the facility administrator to place a prisoner in a less-restrictive setting, including by transfer to the general population of another institution or to a special-purpose housing unit for prisoners who face similar threats. According to DOC, the option to transfer any prisoners (including those in general population) for their own protection instead of placing them in restrictive housing in their current facilities may increase the number of offender transports conducted each year.

Department of Juvenile Justice

The bill also restricts the use of isolated confinement of a juvenile who poses an imminent threat of physical harm to himself or another person to no longer than 24 hours. Each juvenile kept in isolated confinement must receive an initial medical and mental health evaluation within four hours of placement in isolated confinement with follow-up evaluations at least every hour. The bill provides that if a facility administrator finds that the juvenile continues to pose an ongoing and realistic threat of imminent physical harm to another person after 24 hours of isolated confinement, the juvenile may be retained in isolated confinement for no more than an additional 24 consecutive hours. In these cases, the bill requires that the juvenile receive an additional medical and mental health evaluation within four hours of a decision to retain the juvenile in isolated confinement and additional medical and mental health evaluations as indicated.

According to the Department of Juvenile Justice (DJJ), in order to meet the standards for medical and mental health evaluations required by the bill, the agency would need additional staff including: five registered nurses, at a cost of \$109,781 for each position; one registered nurse supervisor, at a cost of \$131,775; five psychologists, at a cost of \$110,337 for each position; one psychologist supervisor, at a cost of \$126,110; and one psychiatrist, at a cost of \$297,500. Position costs shown include salary and benefits. Salary assumptions reflect market rates for the Richmond-Metro area. All positions would be assigned to the Bon Air facility in Chesterfield with a total estimated annual cost of \$1.7 million.

The bill requires a juvenile who is placed in isolated confinement for his own protection must receive similar opportunities for activities, programming, movement, and social interaction, taking into account his safety and the safety of others, as are provided to other juveniles in the facility who are not in isolated confinement. The DJJ estimates that it would need 15 additional residential specialists, to supervise juveniles who fall in this category and estimates the costs for these positions at \$1.2 million annually. In addition to these costs, DJJ estimates that it would need \$418,000 to cover costs for uniforms, supplies, and equipment associated with the new positions.

- 9. Specific Agency or Political Subdivisions Affected:** Department of Corrections and the Department of Juvenile Justice.

10. Technical Amendment Necessary: No

11. Other Comments: The substitute bill contains an enactment clause that states that the provisions of this act will not become effective unless an appropriation effectuating the purposes of this act is included in a general appropriation act passed in 2021 by the General Assembly that becomes law.