

Department of Planning and Budget 2021 Fiscal Impact Statement

1. Bill Number: SB1301 S1

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: Prohibits the use of isolated confinement in state correctional facilities and juvenile correctional centers. Isolated confinement is defined in the bill 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 provides for exceptions for when isolated confinement may be permitted in state correctional facilities and juvenile correctional centers.

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, 402 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. Each of DOC’s facilities has been accredited as fully compliant with the definition and standards imposed by the American Correctional Association for restrictive housing. 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. The DOC estimates that there are approximately 400 offenders in restrictive housing units system-wide at any given time.

The proposed bill restricts the use of isolated confinement of a prisoner in a DOC facility who poses an imminent threat of physical harm to himself or another person to no longer than 48 hours. Each prisoner kept in isolated confinement must receive an initial medical and mental health evaluation within eight hours of placement in isolated confinement and a personal and comprehensive medical and mental health evaluation within 24 hours. The 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 no more than an additional 48 consecutive hours. 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 and additional medical and mental health evaluations as indicated.

Currently, DOC requires an initial evaluation by medical staff before placing an offender in restrictive housing to determine if such placement is contraindicated. This initial evaluation includes checking the prisoner's vital signs and reviewing the prisoner's medical chart to determine if there are any medical conditions that would prevent the offender's placement into restrictive housing. After the offender's initial screening, weight and vital signs are reviewed periodically, including during daily rounds conducted by medical staff. In order to provide the medical evaluations required in this bill, an initial evaluation within eight hours of placement and a comprehensive evaluation within 24 hours of placement, DOC would have to have staff available 24 hours per day, seven days per week. DOC believes that these evaluations would likely be conducted by a medical provider (defined in the bill as a licensed physician, physician's assistant, or nurse practitioner). In order to provide this coverage within the time required by the provisions of the bill, DOC reports that it would need additional medical staff including up to 44 Registered Nurses, at a cost of \$89,310 for each position, and up to 44 physicians, at a cost of \$325,423 for each position. This would provide an additional nurse and an additional physician in each of DOC's 44 facilities. Position costs shown include salary and benefits. Total cost for these positions is approximately \$18.3 million annually.

Currently, at facilities with restrictive housing, mental health services uses a graduated approach with a level of monitoring and intervention based on clinical assessment of offenders' current needs and risks. At institutions without a Psychology Associate assigned on site, health care personnel or health-trained staff interview the offender within one working day after placement in a restrictive housing unit. As with medical evaluations, in order to provide the mental health evaluations required in this bill, an initial evaluation within eight hours of placement and a comprehensive evaluation within 24 hours of placement, DOC would have to have staff available 24 hours per day, seven days per week. In order to provide this coverage, DOC reports that it would need up to 27 additional psychologists, 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.

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; however, the facility 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.

The bill requires prisoners who are neither in isolated confinement nor in full privilege general population to be offered a minimum of three hours of out-of-cell programmatic interventions or other congregate activities per day, including classes, work assignments, or therapeutic treatment aimed at promoting personal development or addressing underlying causes of problematic behavior. This is in addition to the bill's requirement of one hour of recreation per day. Because of the difference between terminology used in the bill and that used by DOC, it is not entirely clear which offenders are included in this category. The DOC's current policy requires, within the resources available to the institution and unless security or safety considerations dictate otherwise, that offenders in restrictive housing units have access to educational services, commissary services, library services, social services, treatment services, religious guidance, and recreational programs (current policy requires a minimum of four hours of supervised, out-of-cell activities seven days per week for most inmates). The bill also requires out-of-cell programmatic interventions for offenders placed in restrictive housing that exceed what is currently offered. According to DOC, the agency may need up to 211 cognitive counselors, at a cost of \$71,001 for each position (includes salary and benefits) to provide what DOC considers one-on-one counseling services required by this bill. Total cost for these positions is approximately \$15.0 million annually.

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 receives 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. The DJJ estimates the costs for new staff at \$1.7 million annually.

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: None