

Department of Planning and Budget 2023 Fiscal Impact Statement

1. Bill Number: SB887 **E**

House of Origin ☐ Introduced ☐ Substitute ☒ Engrossed

Second House ☐ In Committee ☐ Substitute ☐ Enrolled

2. Patron: Morrissey

3. Committee: Finance and Appropriations

4. Title: State correctional facilities; use of isolated confinement.

5. Summary: This bill governs the use of isolated confinement in state correctional facilities. The bill defines isolated confinement as confinement of an incarcerated person to a cell for 17 hours or more per day, regardless of the name of the housing unit in which such confinement occurs. The bill defines the terms medical evaluation, medical practitioner, mental health evaluation, and mental health professional. The bill provides for exceptions for when isolated confinement may be permitted in state correctional facilities.

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

6. Budget Amendment Necessary: Yes, Item 402.

7. Fiscal Impact Estimates: Preliminary. See Item 8 below.

8. Fiscal Implications: The Virginia Department of Corrections (DOC) operates Restorative Housing Units (RHU) that are defined as special purpose bed assignments operated under maximum security regulations and procedures, for the personal protection or custodial management of inmates. Currently, inmates in the Restorative Housing program are offered a minimum of four hours of out-of-cell time daily consisting of showers, outdoor exercise, visitation, interactive journaling, programming, and other group elective options, seven days a week. DOC operates RHUs at all Security Level 2 facilities or higher, except for Deerfield Correctional Center. DOC reports that in FY 2022, a total of 4,962 inmates were placed in RHUs and that on any given day, there are approximately 354 inmates in RHUs.

The bill provides that if the facility administrator determines that the incarcerated person needs to be placed in isolated confinement to prevent an imminent threat of physical harm to himself or another person, isolated confinement can be for no longer than 15 consecutive days, including any investigative time period in any one 60-day period. The bill also limits isolated confinement to 17 hours each day. To comply with the limited confinement periods, the Department indicates it will need to identify available space and, if necessary, make capital modifications to provide secure areas that can be monitored both within housing units

and outside to accommodate the programming/recreation requirements of this legislation at the 24 facilities with RHUs. According to DOC, these secure areas would facilitate out-of-cell time for high security level inmates whose unique risks and needs continue to pose a risk to the safe, secure, and orderly operation of the institution to include ensuring staff security. The cost of constructing these secure areas is not known at this time; however, the cost associated with capital modifications needed to ensure safe and secure areas could be significant, requiring future capital funding for the department.

The bill requires that each incarcerated person placed in isolated confinement must receive an initial medical evaluation within one working day. The required medical evaluations must be completed by a physician, physician's assistant, nurse practitioner, or practical nurse licensed in the Commonwealth or in the jurisdiction where the treatment is to be rendered or withheld. DOC reports that the agency's current medical staff is sufficient to meet the medical evaluation requirements set in the bill.

The bill also requires that each incarcerated person placed in isolated confinement must receive an initial mental health evaluation within one working day. The required mental health evaluations must be conducted by a mental health professional who meets the terms defined in § 54.1-2400.1, Code of Virginia (Mental health service providers; duty to protect third parties; immunity) and who is trained in mental health evaluations. Chapter 2, 2022 Acts of Assembly, Special Session I (the 2022 Appropriation Act) provides approximately \$2.6 million from the general fund in FY 2024 to hire 20 to 28 Mental Health Clinicians, depending on the certification level and associated hiring salary of each new position. These positions were provided to help reduce the ratio of mental health professionals to general population inmates and may be available to help meet the evaluation requirements set in the bill. However, if additional mental health professional positions are needed for incarcerated person placed in isolated confinement as required by this legislation beyond what was funded in Chapter 2, DOC estimates the cost of each licensed Mental Health Clinician at \$121,719 and each non-licensed Mental Health Clinician at \$96,062 annually (includes salary and benefits).

The bill requires that before placing an incarcerated person in isolated confinement for his own protection, the facility administrator must place him in a less-restrictive setting, including by transferring him to the general population of another institution or to a special purpose housing unit for those who face similar threats, unless the incarcerated person faces a security risk so great that no less-restrictive setting would be sufficient or practicable to ensure the incarcerated person's safety. DOC's current policies provide for transfer to an RHU when an inmate requests protective custody, the need for protective custody is documented, and no alternative exists. DOC policies also provide that inmates who cannot return to the general population at the current institution but who would be suitable for the general population at another equal or higher-level institution should be recommended for transfer to an appropriate institution. However, these placement decisions are typically made after an inmate has been moved to RHU, not before the inmate is placed in isolated confinement. According to DOC, if this provision results in additional transfers or voluntary requests for transfers to other facilities before the inmate is placed in an RHU in their current facility, it may increase the number of offender transports conducted each year. This may

require re-assigning correctional officers to transport duties. According to the agency, two certified Correctional Officers are required for each inmate transportation to another facility. Because the provision states "...unless the incarcerated person faces a security risk so great that no less-restrictive setting would be sufficient or practicable to ensure the incarcerated person's safety" it is not possible to determine if or how many transfers would occur. To the extent the number of transfers requests are more than currently managed by DOC, the agency estimates the cost for each additional Correctional Officer required at \$74,892 (includes salary and benefits). If the number of transports conducted reaches a level that requires additional buses, DOC estimates the cost for each 39-passenger transport bus at \$182,124.

The bill also provides that all voluntary and involuntary placements in isolated confinement must be reviewed every 48 hours and that the reason why a less-restrictive setting could not be utilized must be recorded in writing by the facility administrator and placed in the incarcerated person's institutional file. Currently, at facilities with restorative housing programs, inmates participate in a series of formal Institutional Classification Authority (ICA) hearings to develop and review their individual management path. ICA hearings are completed on working day three, working day 10, and then every seven working days after the first 60 days of their assignment to the RHU program. Mandatory members of the ICA team are the Chief of Housing and Programs or the Chief of Security, a Casework Counselor, and a Mental Health Clinician. Casework Counselors and Mental Health Clinicians are not scheduled to work on weekends. Although it is not clear who must conduct the 48-hour reviews required in the bill, if the reviews are to be conducted by the established ICA, DOC believes it needs to have staff available on a rotational basis to cover this workload. To provide adequate staffing, DOC estimates it would need up to 23 Casework Counselors at a cost of \$74,296 each (includes salary and benefits) for a total cost of \$1.7 million general fund annually. Additional Mental Health Clinicians may also be needed if the additional Mental Health Clinician positions provided in Chapter 2 are not sufficient to meet the 48-hour review requirement set by this bill.

The bill also requires that all incarcerated persons who are neither in isolated confinement nor in full privilege general population be offered a minimum of four 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. Programmatic interventions and congregate activities must be consistent with those offered to full-privilege general population. Additionally, a minimum of one hour of recreation must be offered and must take place in a congregate setting unless exceptional circumstances mean doing so would pose a significant and unreasonable safety or security risk. It is not clear which inmates in DOC's current population would be affected by this provision.

The engrossed version of this bill contains an enactment clause, which 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 2023 by the General Assembly that becomes law.

9. Specific Agency or Political Subdivisions Affected: Department of Corrections

10. Technical Amendment Necessary: No

11. Other Comments: None