

Department of Planning and Budget 2022 Fiscal Impact Statement

1. Bill Number: SB108

House of Origin ☒ Introduced ☐ Substitute ☐ Engrossed
Second House ☐ In Committee ☐ Substitute ☐ Enrolled

2. Patron: Morrissey

3. Committee: Finance and Appropriations

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

5. Summary: This bill governs the use of isolated confinement in state correctional facilities and juvenile correctional centers. The bill defines isolated confinement as confinement of an incarcerated person or juvenile to a cell, alone or with another incarcerated person or juvenile, for 20 hours or more per day, other than for the purpose of providing medical or mental health treatment. The bill also 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 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, 2023.

6. Budget Amendment Necessary: Yes. Items 402 and 427.

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

8. Fiscal Implications:

Department of Corrections

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. All inmates in the Restorative Housing program are offered a minimum of four hours of out of cell time daily which exceeds the definition of “Restrictive Housing” per the American Correctional Association as well as the definition of “isolated confinement” set by this bill. All correctional facilities in Virginia are accredited by the American Correctional Association. For the purposes of this fiscal impact statement, DOC’s term “Restorative Housing” is assumed to be similar to the bill’s term “Isolated Confinement.”

DOC operates RHUs at all Security Level 2 facilities or higher, except for Deerfield Correctional Center. DOC reports that in FY 2021, a total of 5,093 inmates were placed in RHUs and that on any given day, there are approximately 350 inmates in RHUs.

The proposed bill restricts the use of isolated confinement of an incarcerated person in a DOC facility to cases when deemed necessary by a medical practitioner and requires that cell confinement due to medical or mental health treatment must be done in a manner that is consistent with the signed recommendations of a medical practitioner.

The bill outlines other circumstances in which incarcerated persons may be placed in isolated confinement, all of which require additional levels of review and documentation. This includes when the incarcerated person poses an imminent threat of physical harm to himself or another person. In these cases, isolated confinement can be for no longer than 15 consecutive days, including any investigative time period in any one 60-day period and each incarcerated person kept in isolated confinement must receive an initial medical and mental health evaluation within 24 hours of placement. Such medical and mental health evaluations must be conducted by licensed professionals.

Currently, at facilities with RHUs, DOC uses a graduated approach to mental health monitoring and intervention based on clinical assessment of offenders' needs and risks. Currently, all inmates are screened on the day of arrival to the RHU or no later than the next working day. These screenings are conducted by Psychology Associates, not all of whom are licensed. DOC reports that of its nine licensed doctoral-level clinical psychologists, six are serving in supervisory positions at headquarters and three are working in facilities. DOC also relies on a mental health contractor that has licensed clinical psychologists on staff when an inmate requires a full psychological evaluation. DOC reports that in 2021, the contractor conducted 15 full evaluations. According to DOC, in order to provide the mental health evaluation services required by this bill, licensed staff would have to be 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 licensed Psychologists Associates, at a cost of \$120,367 each (includes salary and benefits), for a total of \$3.2 million general fund annually. The Introduced budget (HB30/SB30) includes \$2.3 million in FY 2023 and \$2.9 million in FY 2024 from the general fund and 33 positions for DOC to reduce the ratio of mental health staff to general-population inmates in correctional facilities. These positions are funded at a rate of \$86,462 each (salary and benefits) and according to DOC, these positions are not expected to be licensed staff positions. DOC reports that some services could be provided via telebehavioral health platforms; however, the feasibility and fiscal impact of this option has not been assessed by the agency.

The bill also provides 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. According to DOC, allowing voluntary transfers of

inmates instead of placing them in an RHU in their current facility is expected to increase the number of offender transports conducted each year and would require additional Correctional Officer positions and dedicated transport buses depending on the number of transfers conducted. DOC estimates the cost for each additional Correctional Officer required at \$71,378 (includes salary and benefits) and the cost for each additional 39-passenger transport bus at \$182,124.

The bill requires 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. According to DOC, reviews of an inmate's placement in RHUs are currently conducted on the third working day, the tenth working day, and then every seven days thereafter for the first 60 days of placement. In order to increase the review process to meet the bill's requirement of every 48 hours, DOC would need to have staff available on a rotational basis to cover this workload. To provide adequate staffing, DOC estimates the need for an additional 23 Casework Counselors, at a cost of \$71,470 each (includes salary and benefits), for a total of \$1.6 million general fund annually.

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. As previously mentioned, DOC currently offers a minimum of four hours of out-of-cell time per day, staffing, weather, and space permitting, to allow programs and recreation to take place. DOC reports that hiring the new 23 Casework Counselor positions previously identified in this impact statement would support providing the programming required by this bill.

Accounting for all costs, DOC estimates a need for \$4.8 million in general fund support in FY 2024 given the delayed enactment provisions of this bill, as well as an indeterminate amount of funding for correctional officers and transport buses to account for an anticipated increase of inmate transfers between facilities.

Department of Juvenile Justice

The bill prohibits the placement of a juvenile in a juvenile correctional facility in isolated confinement, other than for the purpose of providing medical or mental health treatment. Isolated confinement that is implemented due to medical or mental health treatment must be done in a manner that is consistent with the signed recommendations of a medical practitioner.

The bill outlines other circumstances in which juveniles may be placed in isolated confinement, all of which require additional levels of review and documentation. When the juvenile poses an imminent threat of physical harm to himself or another person, isolated confinement can be for no longer than 24 hours in one 60-day period and 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, unless deemed unnecessary by a medical practitioner. In either case, a medical practitioner must document in writing the reasons why an hourly evaluation is necessary or unnecessary.

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 \$114,765 for each position; one registered nurse supervisor, at a cost of \$137,943; five psychologists, at a cost of \$115,475 for each position; one psychologist supervisor, at a cost of \$131,994; and one psychiatrist, at a cost of \$298,184. Position costs include salary and benefits. The DJJ estimates the total costs for these additional new staff at \$1.7 million general fund annually.

The bill also requires that all juveniles who are neither in isolated confinement nor in full privilege general population must be offered a minimum of four hours of out-of-cell programmatic interventions or other congregate activities per day in addition to a minimum of two hours of recreation per day. The bill requires that such recreation must take place in a congregate setting unless exceptional circumstances mean doing so would create a significant and unreasonable safety or security risk. 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 general fund annually.

In addition to these costs, DJJ estimates that it would need \$308,000 general fund support each year to cover costs for uniforms and, supplies, and \$110,00 in one time general fund support for equipment associated with the new positions.

Accounting for all costs, DJJ estimates a need for \$3.3 million in general fund support in FY 2024 and \$3.2 million in subsequent fiscal years.

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