

Department of Planning and Budget 2024 Session Fiscal Impact Statement

1. Bill Number: SB719 ER

House of Origin	<input type="checkbox"/>	Introduced	<input type="checkbox"/>	Substitute	<input type="checkbox"/>	Engrossed
Second House	<input type="checkbox"/>	In Committee	<input type="checkbox"/>	Substitute	<input checked="" type="checkbox"/>	Enrolled

2. Patron: Bagby

3. Committee: Passed both Houses

4. Title: Restorative housing and isolated confinement; restrictions on use.

5. Summary: This bill governs the use of restorative housing and isolated confinement in state correctional facilities. The bill defines the terms isolated confinement, lockdown, out-of-cell programmatic interventions, and recreation and sets requirements governing these activities. The bill provides for exceptions for when isolated confinement may be permitted in state correctional facilities.

6. Budget Amendment Necessary: Yes, Item 388.

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

8. Fiscal Implications: The bill defines "isolated confinement" as a 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 also defines "Lockdown" to restriction of movement and privileges for an entire pod, housing unit, or facility, such that all individuals therein are confined to their cells for 20 or more hours per day, and out-of-cell programmatic interventions are interrupted.

"Out-of-cell programmatic interventions" is defined when an incarcerated person is either in a congregate setting with other incarcerated persons receiving educational, vocational, rehabilitative, or therapeutic instruction or is individually with one or more staff members who will be offering medical, mental health, or some other social service.

"Recreation" means the space and opportunity for meaningful physical activity outside the cell and housing unit.

Currently, "Restorative Housing" is defined as special purpose bed assignments operated under maximum security regulations and procedures and utilized for the personal protection or custodial management of an incarcerated person. The proposed legislation does not change this definition.

The Department of Corrections (DOC) reports that it operates Restorative Housing Units (RHU) at all Security Level 2 facilities or higher, except for Deerfield Correctional Center. DOC reports that in FY 2023, a total of 6,107 inmates were placed in RHUs with a monthly average of 291 inmates (January through December 2023 data).

Currently, at facilities with RHU programs, inmates participate in a series of formal Institutional Classification Authority (ICA) hearings to develop and review their individual management path. The ICA hearings are conducted by a multidisciplinary team (MDT) that is chaired by the Chief of Housing and Programs or the Chief of Security. Mandatory members of the ICA team include a Unit Manager, an Institutional Program Manager, a Casework Counselor, and a Mental Health Clinician.

ICA hearings are completed on working day three, working day 10, and then every 7 days after for the first 60 days of their assignment to the RHU program. All inmates in the Restorative Housing program are offered a minimum of four hours of out of cell time each day.

Under the provisions of this bill, no person incarcerated in a state correctional facility can be placed in restorative housing or in isolated confinement by any designation for longer than 15 consecutive days, including any investigative time, in any 60-day period, with certain exceptions. The exceptions include if the inmate was placed in such unit voluntarily, the inmate was placed in such unit for his own protection as determined and documented by the facility head or designee, there is a need to prevent an imminent threat of physical harm to the incarcerated person or another person as determined and documented by the facility head or designee, or the inmate's behavior presents a substantial threat to the safe operation of the facility and cannot be resolved through placement in any less-restrictive setting as determined and documented in detail by the facility head or designee. This bill expands this list to include if the placement is necessary for medical isolation, as determined and documented by a licensed medical professional.

As a result, it is unknown how many prisoners would be subject to these exceptions either by DOC or, as required, through action by a licensed medical professional.

Additionally, the bill requires that when an incarcerated person makes a request to be placed in restorative housing or isolated confinement for his own protection, the facility must bear the burden of establishing a basis for refusing the request. Specifically, before placing an incarcerated person in restorative housing or isolated confinement of any designation for his own protection, the facility administrator must place an incarcerated person in a less-restrictive setting, including by transfer to the general population of another institution or to a special-purpose housing unit for incarcerated persons 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. Because it is unknown how many of these requests would be refused by DOC, it is unknown how many prisoners would be placed in isolation confinement or restorative housing.

DOC reports that, on average, 184 inmates make an informed, voluntary request for RHU placement each month. However, it is unclear how many of these requests are currently approved for transfer to other facilities. The actual number of transfers that would result from this bill's provisions is unknown. Therefore, the cost of this provision cannot be known at this time. However, if these inmates are to be transferred to other DOC facilities, DOC believes this could require additional correctional officers or additional correctional staff overtime.

DOC reports that each additional correctional officer would cost \$76,086 general fund per year (salary and benefits included) and that correctional officers are paid one and a half times their hourly salary when they work overtime. If additional transport vehicles are required, DOC estimates the cost of each at \$63,000 general fund.

The alternate action allowed in this bill is to transfer the inmate to a special purpose housing unit within the facility for those who face similar threats. Currently, DOC has set aside special purposes units in all major facilities. However, it is unclear how many of these existing special housing beds would be required to meet the bill's provisions. DOC reports that using existing special housing beds would impact available bed space and may impact the ability to place general population inmates in the classification setting to which they are assigned. The fiscal impact associated with capital needs, if any, cannot be estimated without additional analysis.

Because this 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, it may include populations other than those held in RHUs such as inmates who are in medical and mental health wards or assigned to other specialized beds. DOC estimates that up to 1,100 inmates occupy these types of beds each day. However, it is unknown how many of these inmates occupy their cells for more than 17 hours per day and would, therefore, qualify as inmates in isolated confinement as defined by the bill. Hence, the immediate fiscal impact on the agency is unknown.

The bill also requires that if a person is placed in restorative housing or isolated confinement and no exceptions are granted pursuant to subsection B, all placements in restorative housing or 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. Specifically, the bill allows inmates who are held in medical isolation as determined and documented by a licensed medical professional may be held in restorative housing or in isolated confinement for longer than 15 consecutive days, including any investigative time, in any 60-day period.

Language in the bill requires that the multidisciplinary team conducting formal reviews include at least one non-security advisor for the incarcerated individual, at least one certified mental health professional, and at least one certified medical professional. DOC believes it would need to have staff available on a rotational basis to cover this workload, including weekend coverage. It is not clear how many inmates who are held in RHUs or isolated confinement do not meet one of the exceptions set out in subsection B of the proposal. However, DOC estimates that it may need up to 32 additional Casework Counselors at an annual cost of \$76,065 general fund each, up to 32 additional Mental Health Clinicians at an annual cost of \$100,516 general fund each, and 32 additional Licensed Practical Nurses at an annual cost of \$102,216 general fund each; thus, the fiscal impact could be minimal if there are few inmates who do not meet one of the exceptions to the provisions of this legislation or as high as \$8.9 million if many inmates do not meet one of the exceptions.

Finally, the bill requires that an incarcerated person who has been placed in restorative housing, isolated confinement, or any other population without full privileges must 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. Such programmatic interventions and congregate activities must be consistent with those offered to the full-privilege general population at other facilities of equal security risk. Additionally, the bill requires a minimum of one hour of recreation per day.

The bill defines recreation as space and opportunity for meaningful physical activity outside the cell and housing unit and requires that the activity must take place in a congregate setting unless exceptional circumstances mean that doing so would create significant and unreasonable risk to the safety and security of other incarcerated persons, the staff, or the facility. DOC believes that additional correctional staff or overtime may be needed to supervise the extra recreation time required by the bill. However, staff coverage to meet this requirement is not known at this time as the provision of the bill permits DOC to determine security and safety as it considers recreational activities.

However, because DOC interprets the bill as requiring an additional hour of recreation for anyone who qualifies as being housed in isolated confinement, the agency believes that inmates who are held in medical isolation would also have to participate in recreational activities as defined by the bill. DOC is still assessing the fiscal impact the programming and recreation requirements the bill may have on of infirmary and medical observation units.

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

10. Technical Amendment Necessary: No

11. Other Comments: None