

SENATE BILL 1015

E4

7lr0398
CF 7lr3134

By: **Senators Lee, Currie, Ferguson, Kelley, Pinsky, and Young**

Introduced and read first time: February 3, 2017

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Correctional Services – Restrictive Housing – Limitations**

3 FOR the purpose of prohibiting a correctional facility from placing an inmate in certain
4 restrictive housing for more than a certain number of consecutive days or more than
5 a certain total number of days in a certain period, with certain exceptions; providing
6 certain restrictions on the placement of a certain inmate in restrictive housing;
7 establishing certain protections for inmates who are placed in restrictive housing;
8 requiring correctional facilities to implement certain procedures to allow an inmate
9 to challenge the inmate's placement in restrictive housing; requiring that a
10 correctional facility document and report certain information each time an inmate is
11 placed in restrictive housing; requiring certain information to be made available on
12 the Web site of the Department of Public Safety and Correctional Services;
13 establishing a certain Restrictive Housing Workgroup; providing for the composition,
14 chair, and staffing of the Workgroup; prohibiting a member of the Workgroup from
15 receiving certain compensation, but authorizing the reimbursement of certain
16 expenses; requiring the Workgroup to advise the Department regarding certain
17 matters; authorizing the Workgroup to make recommendations to certain entities
18 regarding the use of restrictive housing; requiring the Department to share certain
19 information with the Workgroup in a certain manner; authorizing the members of
20 the Workgroup to enter a correctional facility with a certain notice; requiring the
21 Workgroup to meet on a certain schedule; requiring the Workgroup to convene a
22 certain meeting before a certain date; establishing that the Workgroup is subject to
23 certain provisions of law; defining certain terms; and generally relating to inmates
24 and restrictive housing.

25 BY repealing and reenacting, without amendments,
26 Article – Correctional Services
27 Section 9–614(a)
28 Annotated Code of Maryland
29 (2008 Replacement Volume and 2016 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



BY adding to
Article – Correctional Services
Section 9–616
Annotated Code of Maryland
(2008 Replacement Volume and 2016 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

Article – Correctional Services

9–614.

(a) (1) In this section, “restrictive housing” means a form of physical separation in which the inmate is placed in a locked room or cell for approximately 22 hours or more out of a 24–hour period.

(2) “Restrictive housing” includes administrative segregation and disciplinary segregation.

9–616.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) “CLINICIAN” MEANS A TRAINED AND LICENSED MEDICAL PROFESSIONAL WHO HAS THE AUTHORITY TO MAKE A DIAGNOSIS AND TREAT PATIENTS.

(3) “RESTRICTIVE HOUSING” HAS THE MEANING STATED IN § 9–614 OF THIS SUBTITLE.

(4) “SERIOUS MENTAL ILLNESS” INCLUDES:

(I) ANXIETY DISORDERS;

(II) BIPOLAR AND RELATED DISORDERS;

(III) INTELLECTUAL DISABILITIES AND AUTISM SPECTRUM DISORDERS;

(IV) MAJOR DEPRESSIVE DISORDER;

(V) MAJOR NEUROCOGNITIVE DISORDERS;

(VI) OBSESSIVE COMPULSIVE AND RELATED DISORDERS;

(VII) PERSONALITY DISORDERS;

(VIII) SCHIZOPHRENIA SPECTRUM AND OTHER PSYCHOTIC
DISORDERS; AND

(IX) TRAUMA AND STRESSOR-RELATED DISORDERS.

(5) "VULNERABLE INMATE" MEANS AN INMATE WHO:

(I) IS 18 YEARS OF AGE OR YOUNGER;

(II) IS 65 YEARS OF AGE OR OLDER;

(III) IS PREGNANT, IN THE POSTPARTUM PERIOD, OR HAS
RECENTLY SUFFERED A MISCARRIAGE OR TERMINATED A PREGNANCY;

(IV) IS OR IS PERCEIVED TO BE LESBIAN, GAY, BISEXUAL,
TRANSGENDER, OR INTERSEX;

(V) HAS A SERIOUS MENTAL ILLNESS; OR

(VI) HAS A PHYSICAL DISABILITY.

(B) THIS SECTION APPLIES TO LOCAL CORRECTIONAL FACILITIES AND
STATE CORRECTIONAL FACILITIES.

(C) (1) AN INMATE MAY NOT BE PLACED IN RESTRICTIVE HOUSING FOR
MORE THAN 15 CONSECUTIVE DAYS OR A TOTAL OF 20 DAYS IN A 60-DAY PERIOD,
UNLESS:

(I) THERE IS CLEAR AND CONVINCING EVIDENCE THAT THE
INMATE POSES AN IMMEDIATE AND SUBSTANTIAL RISK OF PHYSICAL HARM TO THE
SECURITY OF THE FACILITY, TO THE INMATE, OR TO OTHERS;

(II) ALL OTHER LESS-RESTRICTIVE OPTIONS TO ADDRESS THE
RISK HAVE BEEN ATTEMPTED AND HAVE FAILED TO MITIGATE THE RISK OF HARM;

(III) THE INMATE HAS RECEIVED A PERSONAL AND
COMPREHENSIVE MEDICAL AND MENTAL HEALTH EXAMINATION BY A CLINICIAN
BEFORE THE INMATE'S PLACEMENT IN RESTRICTIVE HOUSING; AND

(IV) THE INMATE IS HELD IN RESTRICTIVE HOUSING FOR ONLY THE MINIMUM TIME REQUIRED TO ADDRESS THE RISK, AND FOR A PERIOD OF TIME THAT DOES NOT COMPROMISE THE INMATE'S MENTAL OR PHYSICAL HEALTH.

(2) AN INMATE MAY NOT BE PLACED IN RESTRICTIVE HOUSING FOR REFUSING MEDICAL TREATMENT.

(3) AN INMATE MAY NOT BE PLACED IN RESTRICTIVE HOUSING FOR NONDISCIPLINARY REASONS.

(4) A VULNERABLE INMATE MAY NOT BE PLACED IN RESTRICTIVE HOUSING UNLESS THERE IS A FACILITY-WIDE LOCKDOWN.

(D) (1) AN INMATE PLACED IN RESTRICTIVE HOUSING SHALL BE EVALUATED AT LEAST TWICE PER WEEK IN A CONFIDENTIAL SETTING.

(2) CELLS USED FOR RESTRICTIVE HOUSING SHALL BE PROPERLY VENTILATED, WELL-LIGHTED, TEMPERATURE-CONTROLLED, CLEAN, AND EQUIPPED WITH PROPERLY FUNCTIONING SANITARY FIXTURES.

(3) AN INMATE PLACED IN RESTRICTIVE HOUSING SHALL NOT BE DENIED VISITATION, MAIL, TREATMENT, THERAPY, OR OUT-OF-CELL OR OUTDOOR ACTIVITY, WEATHER PERMITTING.

(4) AN INMATE PLACED IN RESTRICTIVE HOUSING SHALL BE ENTITLED TO THE SAME STANDARD OF FOOD SERVICES AND THE SAME ACCESS TO WATER AND ALL OTHER BASIC NECESSITIES AS THE GENERAL POPULATION.

(5) A CORRECTIONAL FACILITY SHALL MAXIMIZE OPPORTUNITIES FOR RECREATION, EDUCATION, AND SOCIAL INTERACTION FOR INMATES IN RESTRICTIVE HOUSING.

(6) AN INMATE MAY NOT BE RELEASED DIRECTLY FROM RESTRICTIVE HOUSING TO THE COMMUNITY, UNLESS IT IS NECESSARY FOR THE SAFETY OF THE INMATE, STAFF, OTHER INMATES, OR THE PUBLIC.

(E) CORRECTIONAL FACILITIES SHALL IMPLEMENT PROCEDURES TO ALLOW FAIR AND MEANINGFUL OPPORTUNITIES FOR AN INMATE TO CHALLENGE THE INMATE'S PLACEMENT IN RESTRICTIVE HOUSING, INCLUDING:

(1) THE RIGHT TO AN INITIAL HEARING WITHIN 72 HOURS OF PLACEMENT IN RESTRICTIVE HOUSING AND A REVIEW EVERY 15 DAYS AFTER THE INITIAL HEARING;

(2) THE RIGHT TO AN INDEPENDENT HEARING OFFICER; AND

(3) THE RIGHT TO A WRITTEN STATEMENT OF THE BASIS FOR THE HEARING OFFICER'S DECISION.

(F) (1) EACH TIME AN INMATE IS PLACED IN RESTRICTIVE HOUSING, THE CORRECTIONAL FACILITY SHALL DOCUMENT:

(I) THE NAME, AGE, GENDER, RACE, AND ETHNICITY OF THE INMATE;

(II) THE DATE AND TIME THE INMATE WAS PLACED IN AND RELEASED FROM RESTRICTIVE HOUSING; AND

(III) THE REASON FOR THE RESTRICTIVE HOUSING, INCLUDING EXHAUSTION OF LESS-RESTRICTIVE ALTERNATIVES.

(2) THE RECORDS DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION, EXCLUDING ANY IDENTIFYING INFORMATION, SHALL BE MADE AVAILABLE ON THE WEB SITE OF THE DEPARTMENT.

(G) (1) THERE IS ESTABLISHED WITHIN THE DEPARTMENT A RESTRICTIVE HOUSING WORKGROUP.

(2) THE WORKGROUP CONSISTS OF THE FOLLOWING MEMBERS:

(I) TWO MEMBERS OF THE SENATE OF MARYLAND, APPOINTED BY THE PRESIDENT OF THE SENATE;

(II) TWO MEMBERS OF THE HOUSE OF DELEGATES, APPOINTED BY THE SPEAKER OF THE HOUSE;

**(III) THE SECRETARY OF THE DEPARTMENT OF PUBLIC SAFETY
AND CORRECTIONAL SERVICES, OR THE SECRETARY'S DESIGNEE; AND**

(IV) THE FOLLOWING MEMBERS APPOINTED BY THE GOVERNOR:

1. A REPRESENTATIVE OF THE MARYLAND
CORRECTIONAL ADMINISTRATORS ASSOCIATION;

2. A CORRECTIONAL OFFICER;

1 3. A FAMILY MEMBER OF A CURRENTLY INCARCERATED
2 PRISONER;

3 4. AN INDIVIDUAL WHO WAS RECENTLY RELEASED FROM
4 INCARCERATION IN MARYLAND;

5 5. A REPRESENTATIVE OF INTERFAITH ACTION FOR
6 HUMAN RIGHTS;

7 6. A REPRESENTATIVE OF NARAL PRO CHOICE
8 MARYLAND;

9 7. A REPRESENTATIVE OF OUT FOR JUSTICE;

10 8. A REPRESENTATIVE OF THE AMERICAN CIVIL
11 LIBERTIES UNION OF MARYLAND;

12 9. A REPRESENTATIVE OF DISABILITY RIGHTS
13 MARYLAND;

14 10. A REPRESENTATIVE OF THE OFFICE OF THE PUBLIC
15 DEFENDER;

16 11. A BEHAVIORAL AND MENTAL HEALTH EXPERT; AND

17 12. A PRIMARY CARE EXPERT.

18 (3) THE WORKGROUP SHALL SELECT THE CHAIR AND OTHER
19 OFFICERS AS MAY BE REQUIRED FROM AMONG ITS MEMBERS.

20 (4) THE WORKGROUP SHALL ADVISE THE DEPARTMENT ON
21 POLICIES, PROCEDURES, AND BEST PRACTICES RELATED TO THE USE OF
22 RESTRICTIVE HOUSING.

23 (5) THE DEPARTMENT SHALL SHARE WITH THE WORKGROUP IN A
24 TIMELY MANNER ANY INFORMATION REQUESTED BY THE WORKGROUP.

25 (6) THE WORKGROUP MAY MAKE RECOMMENDATIONS TO THE
26 DEPARTMENT, LOCAL CORRECTIONAL FACILITIES, LOCAL ELECTED BODIES, OR, IN
27 ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE, THE GENERAL
28 ASSEMBLY REGARDING THE USE OF RESTRICTIVE HOUSING.

29 (7) A MEMBER OF THE WORKGROUP:

1 (I) MAY NOT RECEIVE COMPENSATION AS A MEMBER OF THE
2 WORKGROUP; BUT

3 (II) IS ENTITLED TO REIMBURSEMENT FOR EXPENSES UNDER
4 THE STANDARD STATE TRAVEL REGULATIONS, AS PROVIDED IN THE STATE
5 BUDGET.

6 (8) THE DEPARTMENT SHALL PROVIDE STAFF FOR THE
7 WORKGROUP.

8 (9) MEMBERS OF THE WORKGROUP MAY ENTER ANY CORRECTIONAL
9 FACILITY IN THE STATE, WITH 2 DAYS' NOTICE.

10 (10) THE WORKGROUP SHALL MEET QUARTERLY.

11 (11) THE WORKGROUP SHALL CONVENE ITS FIRST MEETING BEFORE
12 DECEMBER 31, 2017.

13 (12) THE WORKGROUP IS SUBJECT TO THE OPEN MEETINGS ACT.

14 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
15 October 1, 2017.