



**Testimony for the House Judiciary Committee  
February 15, 2017**

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**HB 786 Correctional Services - Restrictive Housing - Limitations**

**FAVORABLE**

The ACLU of Maryland supports HB 786, which would set reasonable limitations on the use of restrictive housing in Maryland.

The bill will accomplish five major categories of reforms—

First, it will implement protections for vulnerable persons. Unless there is a lockdown, alternative sanctions must be tried before these persons can be put in restrictive housing—older inmates, young inmates, LGBT inmates, pregnant inmates, inmates with serious mental illness, and inmates with physical disabilities.

Second, the bill sets clear and graduated penalties to govern the use of restrictive housing. If someone commits a small rule violation (i.e. anything that is not a crime in the outside world), they can get a maximum of: for a first infraction, a verbal warning; for a second infraction, a report in their file; for a third or subsequent infraction, an alternative sanction (like taking away the TV or radio). For more serious infractions (i.e. anything that would be a crime), persons can be sanctioned with a maximum of for a first infraction, 15 days in restrictive housing; for a second infraction, 30 days in restrictive housing; and for a third and subsequent infraction, 45 days in restrictive housing. Unless someone poses a safety risk, he may not be subject to more than 15 consecutive days or a total of 90 days in restrictive housing in a one-year period.

Third, the bill prohibits the use of restrictive housing for certain bases. Persons may not be put in restrictive housing for non-disciplinary reasons; refusing medical treatment; or self harm, unless approved by a medical professional.

Fourth, when restrictive housing is used, inmates should have access to routine physical and mental health assessments and basic necessities, like phone calls, visits, mail, basic necessities, including, but not limited to, food, water, showers, clothing and bedding, sanitary conditions, medical care, and as much recreation, education, and programming as practicable.

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Fifth, the bill makes sure persons are not released directly from restrictive housing to the community. Under the bill, persons cannot be released directly from restrictive housing, unless necessary for safety.

### **Maryland has years of data showing an overuse and misuse of restrictive housing**

Maryland now has four years of data, from the Department of Public Safety and Correctional Services (DPSCS), showing an overuse of restrictive housing. The General Assembly has ample data to begin implementing substantive limits on the use of restrictive housing.

### **Maryland uses restrictive housing at twice the national average**

Time and again, DPSCS's own data shows an overuse of restrictive housing in Maryland.

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In 2010, DPSCS and the Vera Institute of Justice conducted a collaborative study that found that Maryland placed 8.5% of inmates in restrictive housing, compared with the national average of 4-5%.<sup>1</sup>

In 2015, DPSCS reported to the Senate Judicial Proceedings Committee that Maryland's use of restrictive housing remained at about 8%.<sup>2</sup> The letter also revealed that the average length of stay in administrative segregation is 130 days. The average length of stay in disciplinary segregation is 124 days.<sup>3</sup> Mentally ill inmates fared worse—they are placed in restrictive housing at a rate of 15.5% (twice that of the general population), and spend on average 228 days in administrative segregation and 224 days in disciplinary segregation.<sup>4</sup> According to the U.N. Special Rapporteur on Torture, the mentally ill should never be placed in isolation.<sup>5</sup>

In 2016, pursuant to the reporting law passed by this body (SB 946, 2016) DPSCS again reported its overuse of restrictive housing. That report showed that in FY 16, 68% of Maryland's prison population was placed in restrictive housing at some point in 2016.<sup>6</sup> Moreover, the average length of stay in restrictive housing was 58 days.<sup>7</sup>

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<sup>1</sup> See attached excerpt of the Report of the Vera Institute of Justice—Segregation Reduction Project.

<sup>2</sup> Letter from Stephen T. Moyer, Secretary of the Department of Public Safety and Correctional Services to Hon. Bobby A. Zirkin, Re: Use of Segregated Confinement in Maryland's correctional facilities (dated Oct. 1, 2015).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> Interim Report of the Special Rapporteur of the Human Rights Council on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. A/66/268 (August 5, 2011), par. 78.

<sup>6</sup> Maryland Department of Public Safety and Correctional Service, Report on Restrictive Housing – Fiscal Year 2016 (December 2016).

<sup>7</sup> *Id.*

The 2017 report showed a significant uptick in these statistics—in FY17, 73% of all prisoners were placed in restrictive housing and DPSCS made 814 more placements in restrictive housing.<sup>8</sup>

It is therefore clear that Maryland overuses restrictive housing.

### **Restrictive housing is expensive**

According to a U.S. Government Accountability Office, reducing the use of restrictive housing can save substantial state resources—

“Mississippi and Colorado reported cost savings from closing segregated housing units and reducing the administrative segregation population. For example, Colorado closed a high security facility in 2012, which state officials reported led to cost savings of nearly \$5 million in fiscal year 2012 and \$2.2 million in fiscal year 2013. According to Colorado officials, segregation reform efforts helped lead to the closure of this high security facility. In Mississippi, reforms in segregation also led to the closure of a supermax facility in early 2010, which Mississippi Department of Corrections officials reported saved the state nearly \$6 million annually.”<sup>9</sup> (emphasis added)

### **Overuse of restrictive housing is unsafe**

Normal human contact is essential for ensuring successful re-entry and reducing recidivism rates. Prolonged isolation does not facilitate rehabilitation and can create or exacerbate pre-existing mental illnesses and other social, mental and emotional problems. People held in restrictive housing are subject to conditions of extreme social and sensory deprivation. Deleterious effects of segregated confinement include perceptual distortions and hallucinations;<sup>10</sup> revenge fantasies, rage, and irrational anger;<sup>11</sup> and lower levels of brain function, including a decline in EEG activity after only seven days in solitary confinement.<sup>12</sup> Significantly, people released directly from solitary confinement into the community have higher recidivism rates.<sup>13</sup>

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<sup>8</sup> Maryland Department of Public Safety and Correctional Service, Report on Restrictive Housing – Fiscal Year 2017 (December 2017).

<sup>9</sup> United States Government Accountability Office, Report to Congressional Requesters (2013) evaluating the impact of segregated housing (Pp. 34-35).

<sup>10</sup> Craig Haney, *Mental Health Issues in Long-Term Solitary and “Supermax” Confinement*, 49 CRIME & DELINQ. 124, 130 (2003); see generally Richard Korn, *The Effects of Confinement in the High Security Unit at Lexington*, 15 Soc. Just. 8 (1988).

<sup>11</sup> Holly A. Miller & Glenn R. Young, *Prison Segregation: Administrative Detention Remedy or Mental health Problem?*, 7 CRIM. BEHAV. & MENTAL HEALTH 85, 91 (1997); see generally HANS TOCH, *MOSAIC OF DESPAIR: HUMAN BREAKDOWN IN PRISON* (1992).

<sup>12</sup> Paul Gendreau, N.L. Freedman, G.J.S. Wilde & G.D. Scott, *Changes in EEG Alpha Frequency and Evoked Response Latency During Solitary Confinement*, 79 J. OF ABNORMAL PSYCHOL. 54, 57-58 (1972).

<sup>13</sup> See David Lovell, “Patterns of Disturbed Behavior in a Supermax Population,” *Criminal Justice and Behavior* 35 (2008): 9852; David Lovell, L. Clark Johnson, and Kevin C. Cain, “Recidivism of

In a recent op-ed, the Executive Director of the Colorado Department of Corrections described his experience spending one night in solitary confinement. He went in at 6:45pm, at 11:10 am, he wrote—"I felt as if I'd been there for days. I sat with my mind. How long would it take before [solitary] chipped that away? I don't know, but I'm confident that it would be a battle I would lose."<sup>14</sup> Many people are held for much longer than Mr. Raemisch, with serious consequences for themselves and for society.

### **Restrictive housing is not a panacea for safety**

Other jurisdictions have reduced the use of restrictive housing without compromising prison safety. After Maine cut solitary in half between 2010 and 2012 there was no increase in prison violence.<sup>15</sup> According to a 2014 study published by the Federal Bureau of Prisons, "States that have reduced segregation populations have found no adverse impact on institutional safety."<sup>16</sup>

In 2013, the U.S. GAO also reported jurisdictions that have reduced the use of restrictive housing saw no adverse impact on safety—

After implementing segregated housing unit reforms that reduced the numbers of inmates held in segregation, officials from all five states we spoke with reported *little or no adverse impact on institutional safety*. While these states have not completed formal assessments of the impact of their segregated housing reforms, officials from all five states told us there had been *no increase in violence* after they moved inmates from segregated housing to less restrictive housing.<sup>17</sup> (emphasis added)

For the foregoing reasons, the ACLU of Maryland urges a favorable report on HB 786.

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Supermax Prisoners in Washington State," CRIME AND DELINQUENCY 53 (2007): 633-656; and David Lovell and Clark Johnson, "Felony and Violent Recidivism Among Supermax Inmates in Washington State: A Pilot Study" (University of Washington, 2004).

<sup>14</sup> Rick Raemisch, *My Night In Solitary*, THE NEW YORK TIMES (Feb. 20, 2014), [www.nytimes.com/2014/02/21/opinion/my-night-in-solitary.html?\\_r=0](http://www.nytimes.com/2014/02/21/opinion/my-night-in-solitary.html?_r=0) (accessed Feb. 16, 2015).

<sup>15</sup> Change Is Possible: Solitary confinement destroys lives, ACLU of Maine, available at <http://www.aclumaine.org/changeispossible>.

<sup>16</sup> Federal Bureau of Prisons: Special Housing Unit Review and Assessment (Dec. 2014) ([http://www.bop.gov/resources/news/pdfs/CNA-SHURReportFinal\\_123014\\_2.pdf](http://www.bop.gov/resources/news/pdfs/CNA-SHURReportFinal_123014_2.pdf))

<sup>17</sup> United States Government Accountability Office, Report to Congressional Requesters (2013) evaluating the impact of segregated housing (Pp. 34-35 state).