AN ACT concerning

Correctional Services – Restrictive Housing – Limitations

FOR the purpose of authorizing a certain sanction for a certain inmate who has been found guilty of a certain administrative infraction; authorizing a certain sanction for a certain inmate who has been found guilty of a certain substantive infraction; restricting the number of consecutive and total days that an inmate may be placed in certain restrictive housing; prohibiting the placement of an inmate in restrictive housing for certain reasons; prohibiting a certain vulnerable inmate from placement in restrictive housing under certain circumstances; requiring a certain inmate in restrictive housing to be provided certain health assessments and access to certain privileges and conditions; requiring the failure to provide a certain privilege or condition to a certain inmate to be recorded in the inmate’s file; prohibiting the direct release of a certain inmate from restrictive housing to the community, with a certain exception; providing for the application of this Act; defining certain terms requiring, to a certain extent, the Department of Public Safety and Correctional Services to adhere to the standards of the American Corrections Association for restrictive housing in State correctional facilities; and generally relating to inmates and restrictive housing.

BY repealing and reenacting, without amendments,

Article – Correctional Services
Section 9–614(a)
Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
Underlining indicates amendments to bill.
Strike out indicates matter stricken from the bill by amendment or deleted from the law by amendment.
BY adding to
Article – Correctional Services
Section 9–616 10–802
Annotated Code of Maryland
(2017 Replacement Volume)

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) “Administrative Infraction” means an act committed
inside a correctional facility that does not constitute a violation of
Maryland criminal law.

(3) “Alternative Disciplinary Sanction” means a penalty
identified in COMAR 12.02.27.39D(1) through (4).

(4) “Incident Report” has the meaning stated in COMAR
12.02.27.02D.

(5) “Restrictive Housing” has the meaning stated in § 9–614
of this subtitle.

(6) “Substantive Infraction” means an act committed inside
a correctional facility that constitutes a violation of Maryland
criminal law.

(7) “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 DIAGNOSED SERIOUS MENTAL ILLNESS; OR

(VI) HAS AN INTELLECTUAL, A DEVELOPMENTAL, OR A PHYSICAL DISABILITY OR A TRAUMATIC BRAIN INJURY.

(B) THIS SECTION APPLIES TO FACILITIES OPERATED BY A CORRECTIONAL UNIT, AS DEFINED IN § 2–401 OF THIS ARTICLE.

(C) (1) AN INMATE WHO HAS BEEN FOUND GUILTY OF AN ADMINISTRATIVE INFRACTION MAY BE SUBJECT TO:

(I) FOR A FIRST INFRACTION, NOT MORE THAN A VERBAL WARNING;

(II) FOR A SECOND INFRACTION, NOT MORE THAN AN INCIDENT REPORT; AND

(III) FOR A THIRD OR SUBSEQUENT INFRACTION, NOT MORE THAN AN ALTERNATIVE DISCIPLINARY SANCTION.

(2) SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, AN INMATE WHO HAS BEEN FOUND GUILTY OF A SUBSTANTIVE INFRACTION MAY BE SUBJECT TO:

(I) FOR A FIRST INFRACTION, NOT MORE THAN 15 DAYS IN RESTRICTIVE HOUSING;

(II) FOR A SECOND INFRACTION, NOT MORE THAN 30 DAYS IN RESTRICTIVE HOUSING; AND

(III) FOR A THIRD OR SUBSEQUENT INFRACTION, NOT MORE THAN 45 DAYS IN RESTRICTIVE HOUSING.

(3) UNLESS 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, AN INMATE MAY NOT
BE SUBJECT TO MORE THAN 15 CONSECUTIVE DAYS OR A TOTAL OF 90 DAYS IN
RESTRICTIVE HOUSING IN A 1–YEAR PERIOD.

(D) An inmate may not be placed in restrictive housing for:

(1) nondisciplinary reasons;

(2) refusing medical treatment; or

(3) unless the inmate's placement in restrictive housing is
temporary, has been ordered by a medical professional, and is in a
clinically designated and supervised area, self-harm behavior.

(E) Unless there is a facility-wide lockdown, a vulnerable
inmate may not be placed in restrictive housing until alternative
disciplinary sanctions and informal sanctions have been attempted and
documented and have failed to mitigate the risk of physical harm to the
security of the facility, to the inmate, or to others.

(F) (1) An inmate in restrictive housing shall be provided:

(I) weekly comprehensive physical and mental health
assessments by a member of the evaluation team, as defined in § 4–101 of
this article, to determine if the inmate may be released from
restrictive housing;

(II) the same standard of access that is provided to
inmates not in restrictive housing to:

1. phone calls;

2. visits;

3. mail;

4. basic necessities, including:

A. food;

B. water;

C. showers; and

D. clothing and bedding;
5. SANITARY CONDITIONS; AND

6. MEDICAL CARE, INCLUDING APPROPRIATE PREVENTIVE AND EMERGENCY CARE; AND

(III) MAXIMIZED ACCESS TO RECREATION, EDUCATION, AND PROGRAMMING.

(2) IF A PRIVILEGE OR CONDITION DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION IS NOT PROVIDED TO AN INMATE, THE REASON SHALL BE RECORDED IN THE INMATE'S FILE.

(6) UNLESS NECESSARY FOR THE SAFETY OF THE INMATE, AN INMATE MAY NOT BE RELEASED DIRECTLY FROM RESTRICTIVE HOUSING TO THE COMMUNITY.

10–802.

TO THE EXTENT REASONABLY POSSIBLE, IN STATE CORRECTIONAL FACILITIES THE DEPARTMENT SHALL ADHERE TO THE STANDARDS OF THE AMERICAN CORRECTIONS ASSOCIATION FOR RESTRICTIVE HOUSING.

SECTION 2. AND BE IT FURTHER ENACTED, THAT THIS ACT SHALL TAKE EFFECT OCTOBER 1, 2018.

Approved:

__________________________________________
Governor.

__________________________________________
Speaker of the House of Delegates.

__________________________________________
President of the Senate.