
OLR Bill Analysis

sSB 459 (File 524, as amended by Senate "A")*

AN ACT CONCERNING THE CORRECTION ADVISORY COMMITTEE, THE USE OF ISOLATED CONFINEMENT AND TRANSPARENCY FOR CONDITIONS OF INCARCERATION.

SUMMARY

This bill limits the amount of time and circumstances under which an incarcerated person may be held in isolated confinement and places new requirements on its use. It also does the following:

1. establishes a nine-member Correction Advisory Committee to, among other things, submit a list of correction ombuds candidates to the governor and meet quarterly with the ombuds;
2. expands the current correction ombuds program to serve everyone in Department of Correction (DOC) custody rather than only those under age 18, requires it to provide additional services (e.g., evaluations of DOC services to incarcerated individuals), and grants it additional powers (e.g., to privately communicate with anyone in DOC custody and to access additional materials);
3. relocates the correction ombuds program from DOC to the Office of Governmental Accountability (OGA) and adds the ombuds or his or her designee to the Governmental Accountability Commission (GAC); and
4. requires DOC's report to the Criminal Justice Policy and Planning Division about inmates on restrictive housing and administrative segregation status, which contains aggregated and anonymized data, to instead require similar, disaggregated data on those in isolated confinement.

The bill also makes various minor, technical, and conforming

changes.

*Senate Amendment "A" (1) changes the qualifications for one of the governor's Correction Advisory Committee appointments, (2) specifies that advisory committee members must be indemnified and represented by the attorney general as under existing law for state officers and employees, and (3) specifies the ombuds' evaluation of whether DOC procedures conflict with an incarcerated individual's rights is for nonemergency procedures.

EFFECTIVE DATE: July 1, 2022, except the provisions on the Correction Advisory Committee, correction ombuds appointment, and GAC membership are effective upon passage.

ISOLATED CONFINEMENT

The bill limits and places new requirements on DOC's use of isolated confinement on incarcerated individuals, including those in pretrial, presentencing, or post-conviction confinement. Under the bill, "isolated confinement" means any form of confinement in a cell (except during a facility-wide emergency or lockdown or the provision of medical or mental health treatment) with less than the following time out of a cell for all incarcerated individuals:

1. four hours per day, beginning July 1, 2022;
2. in the general population, four-and-a half-hours per day, beginning October 1, 2022; and
3. in the general population, five hours per day, on and after April 1, 2023.

The bill requires that any use of isolated confinement must maintain the least restrictive environment needed for the safety of incarcerated individuals, staff, and facility security. If DOC holds an incarcerated person in isolated confinement, it must do the following:

1. ensure, within 24 hours of initiating the process, that (a) a medical professional (i.e., licensed physician, physician assistant,

- advanced practice nurse (APRN), registered nurse, or practical nurse) conducts a physical examination and (b) a therapist (i.e., licensed physician who specializes in psychiatry, psychologist, APRN, clinical social worker or master social worker, or licensed professional counselor) conducts a mental health evaluation on the person;
2. ensure the person's safety and well-being is regularly monitored, including through a daily check-in from a therapist;
 3. provide the person access to (a) reading materials, paper, and a writing implement; (b) at least three showers per week; and (c) at least two hours out of the cell per day, including at least one hour for recreational purposes; and
 4. continue de-escalation efforts when applicable and appropriate to the situation.

Under the bill, "de-escalation" means attempting to defuse a crisis without the use of force (i.e., a DOC employee's use of physical force or deadly physical force to compel an incarcerated person's compliance, including by restraints, chemical agents, canines, munitions, or forcible extraction from a cell, other than when responding to a psychiatric emergency).

Additionally, the bill prohibits DOC from placing an individual in isolated confinement until after it has considered less restrictive measures. It also prohibits placing an individual in isolated confinement:

1. for longer than is necessary, or for more than 15 consecutive days or 30 total days within any 60-day period;
2. more than once based on the same incident that was previously used for the placement; and
3. for protective custody (however, it may use isolated confinement for up to five business days while determining whether protective custody status is appropriate).

Minors

The bill prohibits DOC from holding anyone under age 18 in isolated confinement. Current law prohibits the department from placing minors in administrative segregation (i.e., placing an inmate on restrictive housing status after determining the inmate can no longer be safely managed within the correctional facility's general inmate population).

Lockdown Restriction and Reporting

The bill prohibits DOC from imposing a lockdown (i.e., detaining all individuals within their cells) on an entire correctional facility, or on a portion of it, to train staff for more than 24 cumulative hours in any 30-day period.

By January 1, 2024, the bill requires DOC to report to the Judiciary Committee on measures the department has taken to address the following issues:

1. the frequency, cause, and duration of lockdowns;
2. the presence of individuals with serious mental illness or developmental and intellectual disabilities in isolated confinement or on restrictive housing status;
3. efforts to increase the time an incarcerated person spends outside of his or her cell;
4. the provision of therapeutic and other pro-social programing for individuals on restrictive housing status;
5. the use of in-cell restraints; and
6. fostering cooperation and engagement with the correction ombuds and the Correction Advisory Committee.

CORRECTION ADVISORY COMMITTEE

The bill establishes a nine-member Correction Advisory Committee to perform the following functions:

1. submit a list of correction ombuds candidates to the governor for his consideration and appointment;
2. review the correction ombuds' actions;
3. meet at least quarterly to bring matters to the correction ombuds' attention and consult on his or her services, findings, and recommendations; and
4. hold semiannual public hearings to discuss the correction ombuds' services, findings, and recommendations.

Membership

The following table provides the appointing authority, the number of appointments, criteria for the committee member.

Table 1: Correction Advisory Committee Members

<i>Appointing Authority</i>	<i>Number of Appointments</i>	<i>Experience or Qualifications</i>
Senate Judiciary Committee chairperson	One	Is "directly impacted," meaning (1) a person, or the family member of a person, who was previously incarcerated within a DOC facility but is no longer under probation or any DOC supervision or (2) the family member of a person who is in DOC custody
House Judiciary Committee chairperson	One	Has expertise in the law, specifically in the rights of incarcerated individuals
Senate president pro tempore and House speaker	One each	Has demonstrated interest in advancing the rights and welfare of incarcerated individuals
Senate minority leader	One	Has expertise in providing mental health care to currently or formerly incarcerated individuals
House minority leader	One	Has expertise in providing medical care to currently or formerly incarcerated individuals
Governor	Three	One with experience in corrections, one with expertise in medication in a correctional setting, and one who is directly impacted

Appointment Procedures

The bill establishes procedures that appointing authorities must follow to fill initial and vacancy appointments. Within 30 days after the bill passes, or after any vacancy, each appointing authority must submit a letter designating its appointment or appointments to the Judiciary Committee, which must post the letters on its website. The Judiciary Committee chairpersons must schedule a public hearing for the proposed appointments, which must be conducted either within 40 days after the bill passes or 10 days after a vacancy letter is submitted.

After the hearing, the bill requires each appointing authority to confirm or withdraw its appointment or appointments. An appointing authority who withdraws an appointment must, within 10 days of the withdrawal, submit a new letter to the Judiciary Committee designating a different appointment or appointments, which are subject to the process above.

Committee Deadlines and Terms

Under the bill, the Correction Advisory Committee chairpersons are the members appointed by the Judiciary Committee chairpersons. The advisory committee chairpersons must schedule and hold the first committee meeting within 60 days after the bill passes.

Under the bill, committee members serve four-year terms, except that their initial term runs for four years from February 1, 2023. Each member may serve up to two terms. In the event of a vacancy, a vacancy appointment serves the remainder of the original member's term and may be reappointed for up to two more terms.

Within 10 days of each member's first meeting, the member must take an oath of office, administered by a committee chairperson, to diligently and honestly administer the committee's affairs.

Members must serve without compensation but may be reimbursed, within available appropriations, for necessary expenses they incur while serving on the committee.

Under the bill, a majority of the appointed members constitutes a

quorum, which is needed to conduct committee business. A majority vote of the members present is required for committee action.

Immunity

The bill indemnifies committee members and requires the attorney general to represent them under the state law indemnifying state officers and employees. This law requires the state to save harmless and indemnify any state officer or employee from financial loss and expense from a claim, demand, suit, or judgment arising from his or her alleged (1) negligence, (2) deprivation of a person's civil rights, or (3) other acts or omissions causing damage or injury. Additionally, the officer or employee must have been acting in the discharge of his or her duties or within the scope of his or her employment. The law's protections do not apply if the conduct was wanton, reckless, or malicious (CGS § 5-141d).

CORRECTION OMBUDS

Correction Ombuds Applications

Within 80 days after the bill passes, or within 60 days after any correction ombuds vacancy, the bill requires the committee to solicit applications for the correction ombuds position and meet to consider and interview the most qualified candidates who are Connecticut residents. The committee must select between three and five of the most outstanding candidates, publish the candidate's names on its website, and hold a public hearing that allows public testimony on these candidates. The committee must submit to the governor a list of the selected candidates ranked by committee preference.

Appointment

Within 30 days after receiving the advisory committee's list, the bill requires the governor, with General Assembly approval, to appoint a person qualified by training and experience as the correction ombuds. If the candidate withdraws from consideration before being confirmed by the General Assembly, the designation must be made from the list of remaining candidates submitted to the governor. If the governor fails to designate a candidate from the list within 30 days after receiving it, the candidate ranked first will receive the designation and be referred to the

General Assembly for confirmation.

Under the bill, if the General Assembly is not in session, the designated candidate may serve as the acting correction ombuds and be entitled to the compensation, privileges, and powers of the ombuds until the General Assembly meets to act on the appointment.

The bill specifies that the appointed ombuds' initial term is two years, and he or she may serve until a successor is appointed and confirmed. The person may be reappointed as ombuds for succeeding terms.

Vacancy

Upon any vacancy of the correction ombuds position, the associate correction ombuds, who is designated by the Correction Advisory Committee, serves as acting correction ombuds. As acting correction ombuds, he or she is entitled to the compensation, privileges, and powers of the ombuds until the legislature meets to act on the appointment. The associate correction ombuds serves as acting correction ombuds until a candidate is confirmed by the General Assembly or, if it is not in session, until the governor designates someone.

Office of the Correction Ombuds

The bill expands the current correction ombuds program to include (1) everyone in DOC custody, rather than just those under age 18, and (2) additional services. The bill moves the Correction Ombuds Office from DOC to OGA for administrative purposes, and makes the correction ombuds the head of the office. Regardless of any state law, the bill requires the correction ombuds to act independently of any department in performing office duties.

Ombuds Services

The bill renames and replaces current law's "ombudsman services" with "ombuds services." Under the bill, ombuds services include:

1. evaluating DOC's delivery of services to incarcerated individuals;

2. periodically reviewing the procedures DOC established to carry out its statutory duties and evaluating whether these nonemergency procedures conflict with incarcerated individuals' rights;
3. receiving communications from individuals in DOC custody about department decisions, actions, omissions, policies, procedures, rules, or regulations;
4. conducting site visits of DOC correctional facilities;
5. reviewing correctional facilities' operation and nonemergency procedures, including use of force procedures;
6. recommending procedure and policy revisions to DOC;
7. taking all possible actions, including conducting public education programs, undertaking legislative advocacy, and making proposals for systemic reform and formal legal action to secure and ensure the rights of individuals in DOC custody, with the ombuds exhausting all means to reach a resolution before initiating litigation; and
8. publishing on its website a semiannual summary of all ombuds services and activities during the six-month period before the publication.

Under current law, ombudsman services include the following:

1. receiving complaints from individuals in DOC custody about department decisions, actions, omissions, policies, procedures, rules, or regulations;
2. investigating complaints, rendering a decision on their merits, and communicating their decision to the complainants;
3. recommending to the DOC commissioner a resolution of any complaint found to have merit; and
4. publishing a report of all ombudsman services and activities.

Appropriations

The bill requires the General Assembly to annually appropriate the amount needed to pay the staff salaries, office expenses, and other actual expenses the ombuds office incurs in performing its duties. Any legal or court fees the state obtains in actions the ombuds brings must be deposited in the General Fund.

Investigations and Corroborating Evidence

Under the bill, the correction ombuds must rely on a variety of sources during investigations to corroborate matters raised by incarcerated individuals or others. If a matter turns on validating a particular incident, the ombuds must endeavor to rely on communications from incarcerated individuals who have reasonably pursued a resolution of the complaint through any existing DOC internal grievance procedures.

The bill also requires the ombuds, in all events, to make a good faith effort to provide the DOC commissioner an opportunity to investigate and respond to concerns before making them public.

Confidentiality and Exceptions

Under current law, with exceptions, communications between someone under age 18 who is in DOC custody and the correction ombudsman are generally confidential. The bill extends similar protections and exceptions to everyone in DOC custody.

Under the bill, all oral and written communications, and records relating to these communications, between a person in DOC custody and the correction ombuds staff are generally confidential and not disclosable without the person's consent. This confidential information also includes the complainant's identity, the details of the communications, and the ombuds' findings. However, the bill allows the ombuds to disclose, without the person's consent, general findings or policy recommendations based on these communications so long as no individually identifiable information is disclosed. The bill requires the ombuds to disclose sufficient information to the DOC commissioner, or his designee, as necessary to respond to the ombuds' inquiries or to

carry out recommendations, but the information may not be further disclosed outside of DOC.

Regardless of the confidentiality provision above, whenever in the course of carrying out the ombuds' duties, the ombuds or a staff member becomes aware of the commission or planned commission of a criminal act or threat that he or she reasonably believes is likely to result in death or substantial bodily harm, then the bill requires the ombuds to notify the DOC commissioner or an administrator of any correctional facility housing the perpetrator or potential perpetrator about the act or threat, and its nature and target.

Regardless of any state laws on confidentiality of records and information, the bill grants the ombuds access to, and the right to inspect and copy, any records needed to carry out his or her responsibilities. This provision does not compel access to any record (1) protected by attorney-client privilege or attorney-work product doctrine, (2) related to pending internal or external investigations, or (3) related to emergency procedures (i.e., procedures DOC uses to manage control of tools, keys, and armories and concerning emergency plans, emergency response units, facility security levels and standards, and radio communications).

In performing the ombuds duties, the bill allows the ombuds to privately communicate with any person in DOC custody. The communications are confidential except as provided by the bill's provisions on corroborating matters and exceptions to confidential communications.

Under the bill, the following information is confidential and not subject to disclosure under the Freedom of Information Act, except as provided by the bill's provisions on corroborating matters and exceptions to confidential communications:

1. the name, address, and other personally identifying information of a person making a complaint to the ombuds;
2. information obtained or generated by the ombuds office during

investigation; and

3. confidential records the ombuds or the office obtains.

Grants, Gifts, and Bequests

The bill establishes a correction ombuds account as a separate, non-lapsing account in the General Fund. The bill allows the ombuds to apply for and accept grants, gifts, and bequests of funds from other states and federal and interstate agencies to carry out his or her responsibilities under the bill. Any funds received under this provision must be credited into this account and may be used by the ombuds to perform his or her duties.**Retaliation Prohibited**

The bill prohibits state or municipal agencies from discharging, or in any manner discriminating or retaliating against, any employee who in good faith makes a complaint to the correction ombuds or cooperates with the ombuds office in an investigation.

Legislative Report

The bill requires the correction ombuds to submit an annual report to the Judiciary Committee, beginning by December 1, 2023, on the confinement conditions in the state's correctional facilities and halfway houses. The report must detail the correction ombuds' findings and recommendations.

OGA

The bill moves the ombuds office from DOC to OGA. By law, OGA consists of independent divisions for which it provides consolidated personnel, payroll, affirmative action, and administrative and business office functions, including information technology associated with these functions. These divisions have independent decision-making authority, including the ability to make decisions on budgetary issues and employing necessary staff.

By law, the GAC is within OGA and is responsible for (1) recommending OGA executive administrator candidates to the governor and (2) terminating the executive administrator's employment, if necessary. The bill adds the correction ombuds or the ombuds' designee, who cannot be a state employee, to the commission.

ANNUAL REPORT ON CERTAIN DATA***Current Reporting Requirements***

The bill modifies the requirements for the report that DOC must at least annually submit to the Criminal Justice Policy and Planning Division. Under current law, the report must contain certain aggregated and anonymized data on inmates' restrictive housing or administrative segregation status, including the following:

1. number of individuals on restrictive housing status on the first day of each of the prior 12 months;
2. disaggregated data based on an inmate's age, gender identity, ethnicity, mental health score (if one exists), and the form and phase of housing in which the individual is held on restrictive housing status;
3. number of individuals whose cumulative time on administrative segregation status falls within each of 14 specified ranges, which span from one day to more than 3,650 days; and
4. number of inmates in each correctional facility who spent more than 15 cumulative days on administrative segregation status, and disaggregated data for each.

The bill also removes a requirement that DOC publish on its website a description of any form and phase of housing used at any correctional facilities for inmates on restrictive housing status.

Reporting Requirements Under the Bill

Instead of the data on inmates on administrative or restricted housing status, the bill requires DOC to provide similar data about incarcerated individuals in isolated confinement. Under the bill, the data must be anonymous'; disaggregated and broken down by facility; and include the age, race, and sex of the incarcerated individuals included in the data. The bill also specifies that DOC must annually submit the report on or before January 1.

The bill requires the report to include the number of incarcerated

individuals who were in isolated confinement for more than 15 cumulative days in the previous calendar year, broken down by different ranges of time (16 to 30 days, 31 to 60 days, 61 to 90 days, and more than 90 days).

The bill also requires the report to include the following:

1. the number of incidents broken down by month during the previous calendar year in DOC facilities categorized as (a) suicides, (b) attempted suicides, (c) self-harm, (d) assaults by incarcerated individuals on staff members, and (e) assaults and fights between incarcerated individuals;
2. monthly reports showing the total number of incarcerated individuals on whom DOC used force, including the use of (a) chemical agent devices, (b) full stationary restraints, (c) deadly physical force, (d) in-cell restraints, (e) less than lethal munitions, (f) lethal munitions, (g) medical restraints, (h) physical force, (i) therapeutic restraints, (j) cell extraction, and (k) canines;
3. grievances (i.e., formal complaints against DOC) that incarcerated individuals filed, broken down by month, including the number dismissed, affirmed, or otherwise resolved;
4. programs offered to incarcerated individuals, including the program title and a brief description of the program; the number of spots available in the program; and the number of individuals enrolled in the program on the first of each month;
5. internal DOC work assignments held by incarcerated individuals, including the work assignment title; the daily wage paid; and the number of individuals in each position at the beginning of each month; and
6. external jobs held by incarcerated individuals working for outside employers, including the job title; hourly wage paid; the number of individuals in each position as of the first of each month; and the employer's name.

As under existing law, DOC must publish on its website the report and the formula it uses for calculating an incarcerated person's mental health score.

ELIMINATED TRAINING AND WELLNESS REQUIREMENTS

The bill eliminates the requirement that DOC, within available appropriations, (1) provide certain trainings to DOC employees who interact with inmates (e.g., to recognize mental illness symptoms and the consequences of untreated mental illness) and (2) take measures to promote the wellness of DOC employees who interact with inmates.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 31 Nay 8 (03/31/2022)

Appropriations Committee

Joint Favorable

Yea 47 Nay 3 (04/22/2022)