

**STATE  
FISCAL IMPACT**

**Drafting Number:** LLS 11-0090

**Date:** March 21, 2011

**Prime Sponsor(s):** Sen. Carroll  
Rep. Levy

**Bill Status:** Senate Judiciary

**Fiscal Analyst:** Jessika Shipley (303-866-3528)

**TITLE:** CONCERNING APPROPRIATE USE OF RESTRICTIVE CONFINEMENT.

<b>Fiscal Impact Summary</b>	<b>FY 2011-2012</b>	<b>FY 2012-2013</b>
<b>State Revenue</b>		
<b>State Expenditures</b>		
General Fund	\$1,082,745	\$216,019
<b>FTE Position Change</b>	25.5 FTE	25.5 FTE
<b>Effective Date:</b> The bill is effective July 1, 2011, and applies to offenders placed or housed in administrative segregation on or after that date or offenders who are housed in administrative segregation at the time the act takes effect.		
<b>Appropriation Summary for FY 2011-2012:</b> See State Appropriations section.		
<b>Local Government Impact:</b> None.		

**Summary of Legislation**

This bill sets forth various requirements for the Department of Corrections (DOC) to place any state inmate in administrative segregation (AS), as well as the requirements for releasing inmates from AS. Imposition of AS on any state inmate requires a hearing and written decision by a classification committee and is only permissible if the inmate poses an immediate and significant risk of harm to others or the security of the institution and all other less restrictive options have been exhausted. Each correctional facility currently has a classification committee, which consists of the administrative head of the facility, or his or her designee, a case manager supervisor, the custody manager or his or her designee, the intelligence officer, and the case manager for assignments that are security-sensitive to the facility and the public. The bill requires the addition of a licensed mental health clinician to the classification committees.

Prior to being placed or housed in AS, inmates with a serious mental illness or significant mental impairment must be evaluated by a licensed mental health clinician and the clinician's written report of the evaluation must be reviewed by the clinician's supervisor. The supervisor may overrule the clinician's determination that an inmate be placed in AS. All other inmates must be given a mental health evaluation within 30 days after initial placement in AS.

No offender may be housed in AS for longer than 30 days based on a single assessment. The DOC may retain an inmate in AS for one or more successive 30-day periods only if a licensed mental health clinician conducts a new mental health evaluation at the end of each 30-day period. For offenders with serious mental illness or other significant mental impairment, the evaluation must be conducted with a licensed mental health clinician and the DOC's chief of mental health at the end of each 30-day period, unless signs of mental health decompensation arise sooner. Any state inmate who is determined to have experienced mental health decompensation during placement in AS must be removed from such placement within 48 hours of the determination. All mental health evaluations required by the bill are to be confidential and may not be conducted at cell front. The bill provides specific requirements for the evaluations and lists a number of things of which inmates may not be deprived while in AS.

The bill prohibits the DOC from placing or housing in AS an inmate who is within six months of release without certification from the executive director of the department that placing the inmate in the general population would pose a grave risk of harm to others or the security of the institution and all other less restrictive options have been exhausted.

An offender may not be placed in AS solely because he or she needs protective custody unless such placement is specifically requested by the offender. Any offender who requests AS placement may request and will be granted release from AS at any time. On or before November 1, 2011, the executive director of the DOC is required to review the status of all inmates housed in AS to determine whether such placement is appropriate and to ensure proper mental health evaluations are being conducted. The department is required to report annually to the House and Senate Judiciary Committees on the results of these reviews, on the requests made by inmates to be housed in AS, and on the certifications made by the executive director regarding continuing to house inmates in AS who are within six months of release.

The warden of each facility is given the authority take measures to restrict the confinement of any inmate who is a confirmed leader or active member of any security threat group. The DOC is required to ensure that custody and case management staff employed in AS receive training on recognizing signs of mental illness or decompensation and on the proper management of offenders with serious mental illness or other significant mental impairment.

Finally, the bill permits the accrual of earned time for inmates in AS, provided they meet the statutory criteria for doing so. Any cost savings from implementation of the bill is redirected to the DOC to support behavior modification programs, incentive programs, mental health services or programs, or similar efforts designed as viable alternatives to AS.

## **State Expenditures**

This bill will result in savings and expenditures for the DOC. The net cost of the bill is \$1,082,745 and 25.5 FTE for FY 2011-12 and \$216,019 and 25.5 FTE for FY 2012-13. The savings and costs are discussed below.

**Savings.** Pursuant to the bill, inmates in AS can accrue earned time provided they meet certain statutory criteria. Departmental data show that 75 percent of a random sample of close custody (the next highest custody level that can currently accrue earned time) inmates were eligible to accrue earned time in CY 2010. The average amount of earned time accrued to the close custody inmates was 62 days per year. A similar percentage of AS inmates are expected earn 62 days per calendar year.

The average length of stay in AS is 18.8 months. Table 1 details the five-year cost savings attributable to earned time. The number of offenders releasing early was determined by identifying how many releases to mandatory parole in CY 2010 were in AS within 1 year, 2 years, etc., of their release. Because the bill takes effect in July, only half of the average accrual can be earned in the first year. In the second year, the full 62 days can be earned. The total accrual levels out at 97 additional days per inmate. The cost savings are calculated at the rate of \$88.59 per day.

<b>Table 1. Five-Year Fiscal Impact On Correctional Facilities</b>				
<b>Fiscal Year</b>	<b>Number of AS Inmates Eligible for Earned Time</b>	<b>Average Number of Days Earned Per Person</b>	<b>Total Number of Days Released Early</b>	<b>Total Savings</b>
FY 2011-12	132	31	4,092	\$362,510
FY 2012-13	149	93	13,857	\$1,227,592
FY 2013-14	164	97	15,908	\$1,409,290
FY 2014-15	177	97	17,169	\$1,521,002
FY 2015-16	182	97	17,654	\$1,563,968
<b>Total</b>			68,680	\$6,084,361

Additionally, the bill requires mental health evaluations for all inmates in AS and prohibits housing of inmates in AS within six months of release. Correctional populations fluctuate on a daily basis and inmates change custody levels fairly often. Decisions about classification, placement, mental health status, and release are made on a case-by-case basis and depend on a number of factors. As such, it is impossible to state with certainty how many inmates will be diverted or removed from AS as a result of a mental health evaluations or being within six months of a mandatory release date, parole release date, or statutory release date.

The DOC is not expected to remove any individuals from AS as a result of the bill. However, if 10 percent of the total AS population, which was 1,451 on February 28, 2011, or 145 inmates, were no longer in AS pursuant to the bill, the average annual savings would be \$2,610,000. Administrative segregation costs the DOC between \$15,000 and \$21,500 more per year in operating costs than the general population and the potential savings are based on an average savings of \$18,000 per year per inmate multiplied by 145 inmates a year.

**Costs.** The bill requires 12.0 new correctional officer FTE, with associated 2.0 FTE for supervision of those correctional officers, in order to move all AS inmates to and from mental health evaluations. The department also requires 4.0 FTE at the Social Worker III level to carry out the evaluations and training requirements, with 0.5 FTE to supervise the new social workers. The bill specifies that the DOC's chief of mental health is required to attend mental health evaluations for all inmates with a serious mental illness or other significant impairment who are housed in AS for longer than 30 days. The fiscal note estimates that there will be approximately 668 of these evaluations required each month, which equates to an additional 5.0 FTE at the chief of mental health level. Finally, changes to earned time accrual eligibility and new reporting requirements require computer system programming modifications and ongoing maintenance, which will take approximately 4,160 hours each year. This equates to 2.0 FTE at the IT Professional III level. Table 2 shows the costs associated with the new FTE.

<b>Table 2. Expenditures for the DOC Under SB 11-176</b>		
<b>Cost Components</b>	<b>FY 2011-12</b>	<b>FY 2012-13</b>
Personal Services	\$1,301,103	\$1,419,386
FTE	25.5	25.5
Operating Expenses	\$24,225	\$24,225
Capital Outlay	\$119,927	\$0
<b>TOTAL</b>	<b>\$1,445,255</b>	<b>\$1,443,611</b>

### **Expenditures Not Included**

Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. The centrally appropriated costs subject to this policy are summarized in Table 3.

<b>Table 3. Expenditures Not Included Under SB 11-176*</b>		
<b>Cost Components</b>	<b>FY 2011-12</b>	<b>FY 2012-13</b>
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$181,050	\$181,050
Supplemental Employee Retirement Payments	\$58,876	\$75,675
<b>TOTAL</b>	<b>\$239,926</b>	<b>\$256,725</b>

*\*More information is available at: <http://colorado.gov/fiscalnotes>*

### **Departmental Differences**

The DOC identified a need for a net General Fund expenditure of \$1,888,963 and 39.8 FTE for FY 2011-12 and \$1,130,010 and 39.8 FTE for FY 2012-13. The department reported that the evaluations required by the bill are more substantial than those currently required by administrative regulations. Additionally, conducting evaluations in private away from cell fronts will require a sizable number of correctional officers. The fiscal note assumes, however, that the requirements of the bill can be met using a mixture of new and existing appropriations.

### **State Appropriations**

For FY 2011-12, the DOC requires a General Fund appropriation of \$1,082,745 and 23.5 FTE. Of that amount, \$122,613 should be reappropriated to the Governor's Office of Information Technology (OIT). Additionally, the OIT requires a General Fund appropriation of 2.0 FTE.

### **Departments Contacted**

Corrections