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HOUSE BILL NO. 35

Offered January 14, 2026

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A BILL to amend and reenact § 53.1-39.2 of the Code of Virginia, relating to restorative housing and isolated confinement; restrictions on use.

Patrons—Cole, J.G., Carroll, Hope, Keys-Gamarra, Clark, Cousins, Hernandez, McClure, Rasoul, Seibold and Tran; Senator: Bagby

Referred to Committee on Public Safety

Be it enacted by the General Assembly of Virginia:

1. That § 53.1-39.2 of the Code of Virginia is amended and reenacted as follows:

§ 53.1-39.2. Restorative housing or isolated confinement; restrictions on use.

A. As used in this section:

"Facility administrator" means the superintendent, warden, or person otherwise in charge of the correctional facility.

"Isolated confinement" means confinement of an incarcerated person to a cell for 17 hours or more per day, regardless of the name of the housing unit in which such confinement occurs.

"Lockdown" means the restriction of movement and privileges for an entire pod, housing unit, or facility, such that all individuals therein are confined to their cells for 20 or more hours per day, and out-of-cell programmatic interventions are interrupted.

"Medical evaluation" means an evaluation that is done for the purpose of determining whether the incarcerated person needs medical treatment and shall be done in a manner that is consistent with the signed recommendations of a medical practitioner.

"Medical practitioner" means a physician, physician's assistant, nurse practitioner, or practical nurse licensed in the Commonwealth or in the jurisdiction where the treatment is to be rendered or withheld.

"Mental health evaluation" means an evaluation that is carried out by a mental health professional for the purpose of determining the mental health needs of the incarcerated person and whether it is safe for the person to be placed in restorative housing.

"Mental health professional" means the same as that term is defined in § 54.1-2400.1 who is trained in mental health evaluations.

"Out-of-cell programmatic interventions" means that the incarcerated person is either in a congregate setting with other incarcerated persons receiving educational, vocational, rehabilitative, or therapeutic instruction or is individually with one or more staff members who will be offering medical, mental health, or some other social service.

"Recreation" means the space and opportunity for meaningful physical activity outside the cell and housing unit.

"Restorative housing" means special purpose bed assignments operated under maximum security regulations and procedures and utilized for the personal protection or custodial management of an incarcerated person.

B. No incarcerated person in a state correctional facility shall be placed in restorative housing *or in isolated confinement by any designation for longer than 15 consecutive days, including any investigative time, in any 60-day period,* unless (i) such incarcerated person requests placement in restorative housing *or isolated confinement* with informed voluntary consent~~,~~*;* (ii) such incarcerated person needs such confinement for his own protection, *as determined and documented by the facility head or designee;* (iii) there is a need to prevent an imminent threat of physical harm to the incarcerated person or another person, *as determined and documented by the facility head or designee*; *(iv) the placement is necessary for medical isolation, as determined and documented by a licensed medical professional;* or ~~(iv)~~ *(v)* such person's behavior ~~threatens the orderly operation of the facility, provided that:~~ *presents a substantial threat to the safe operation of the facility and cannot be resolved through placement in any less-restrictive setting, as determined and documented in detail by the facility head or designee.*

1. When an incarcerated person makes a request to be placed in restorative housing *or isolated confinement* for his own protection, the facility shall bear the burden of establishing a basis for refusing the request~~;~~*, but before placing an incarcerated person in restorative housing or isolated confinement of any designation for his own protection, the facility administrator shall place an incarcerated person in a less-restrictive setting, including by transfer to the general population of another institution or to a special-purpose housing unit for incarcerated persons who face similar threats, unless the incarcerated person faces a security risk so great that no less-restrictive setting would be sufficient or practicable to ensure the*

incarcerated person's safety.

2. An incarcerated person who is in restorative housing *or isolated confinement* for his own protection based on his request or with his informed voluntary consent may opt out of restorative housing *or isolated confinement* by voluntarily removing his consent to remain in restorative housing *or isolated confinement* by providing informed voluntary refusal~~;~~. *Administrators shall provide safe placement outside of isolated confinement to any incarcerated person who indicates informed voluntary refusal within 48 hours of the submission of such a refusal.*

3. An incarcerated person placed in restorative housing *or isolated confinement* for his own protection (i) shall receive ~~similar~~ *equivalent* opportunities for *out-of-cell programmatic interventions, physical* activities, movement, and social interaction, ~~taking into account~~ *without directly risking* his safety and the safety of others, as are provided to incarcerated persons in the general population of the facility and (ii) shall have such placement reviewed for assignment into protective custody~~;~~.

4. An incarcerated person who has been placed in restorative housing *or isolated confinement* for his own protection and is subject to removal from such confinement, not by his own request, shall be provided with a timely and meaningful opportunity to contest the removal~~; and~~.

5. *In any situation in which the facility administrator determines that an incarcerated person shall be placed in isolated confinement to prevent an imminent threat of physical harm to the incarcerated person or another person, the incarcerated person may be placed in isolated confinement for no longer than 15 consecutive days, including any investigative time period. An incarcerated person may be placed in an additional period of isolated confinement, not to exceed a single period of 15 consecutive days, only in those situations where a new, documented incident of behavioral misconduct occurs after the completion of the initial period of isolated confinement and such behavioral misconduct creates an imminent threat of physical harm to the incarcerated person or another person and such threat cannot be alleviated through any less restrictive measures.*

6. An incarcerated person who has been placed in restorative housing*, isolated confinement, or any other population without full privileges* shall be offered a minimum of four hours of out-of-cell programmatic interventions or other congregate activities per day*, including classes, work assignments, or therapeutic treatment,* aimed at promoting personal development or addressing underlying causes of problematic behavior~~, which may include recreation in~~. *Such programmatic interventions and congregate activities shall be consistent with those offered to the full-privilege general population at other facilities of equal security risk. Additionally, a minimum of one hour of recreation shall be provided and shall take place in* a congregate setting, unless exceptional circumstances mean that doing so would create significant and unreasonable risk to the safety and security of other incarcerated persons, the staff, or the facility.

C. *1.* If an incarcerated person is placed in restorative housing *or isolated confinement* pursuant to subsection B, (i) such placement shall be reviewed ~~once a week~~ *every 48 hours* and the reason why a less restrictive setting could not be utilized *and the facts and circumstances that necessitated the incarcerated person's placement in restorative housing or any form of isolated confinement* shall be recorded in writing by the facility administrator and placed in the incarcerated person's institutional file; (ii) the facility administrator shall ~~document an action plan for transitioning the incarcerated person out of restorative housing as soon as safely possible~~ *ensure that the incarcerated person receives a medical and mental health evaluation from certified medical and mental health professionals within one working day of placement in restorative housing or any form of isolated confinement*; ~~and~~ (iii) the facility administrator shall document *an action plan and timeline for transitioning the incarcerated person out of restorative housing or isolated confinement as soon as safely possible and at the earliest opportunity; (iv) the facility administrator shall document* the date and duration of such placement, as well as the statutory basis under this section for such placement, and include all such documentation in the incarcerated person's institutional file*; and (v) the facility administrator shall notify the regional administrator in writing that the incarcerated person was placed in isolated confinement in accordance with this subdivision within 24 hours of such placement.*

2. Formal reviews of an incarcerated person's placement in any form of isolated confinement shall be held in their presence, inform them of any reasons administrative officials believe isolated confinement remains necessary, and give the incarcerated person an opportunity to respond to those reasons, and a formal ruling shall be provided to the incarcerated individual within 24 hours. Any individual in isolated confinement shall have a chance to formally appeal such a ruling within 24 hours and receive a response to that appeal within 24 hours of its submission. These reviews and appeals, including all responses by the incarcerated individual and reasons for continued isolated confinement, shall be documented. This formal review shall be conducted by a multidisciplinary team that shall include at least one non-security advisor for the incarcerated individual, at least one certified mental health professional, and at least one certified medical professional.

D. An incarcerated person may be offered less than four hours of out-of-cell programmatic interventions or other congregate activities per day only in the circumstance that the facility administrator determines a lockdown is required to ensure the safety of the incarcerated persons in the facility.

Any lockdown covering part or all of any facility that interrupts out-of-cell programmatic interventions (i)

shall require that a specific and necessary security purpose be served that cannot be achieved without confinement and interruption; (ii) shall document such purpose; (iii) shall end as soon as that purpose is served; (iv) shall last no longer than seven days unless the facility head formally requests and receives permission from the regional administrator before seven days have passed; (v) shall have a documented timeline and standard of completion when lasting more than seven days; and (vi) may not occur more than once within 30 days without approval from the regional administrator confirming that a new, specific, documented security risk has developed that warrants such extensive lockdowns, including the reasons why security cannot be maintained without additional lockdown time. Such documentation shall be provided to the Director and published on the Department's website.

E. ~~The facility administrator shall ensure that any incarcerated person placed in restorative housing, for any reason, is provided with a medical evaluation and a mental health evaluation within one workday of such placement, unless such evaluation was completed within the previous week.~~

~~F. The facility administrator shall have a defined and publicly available policy and procedure for the process of transitioning an incarcerated person placed in restorative housing out of such restorative housing and back to the general population of the facility, subject to the approval of the Director.~~

~~G. Nothing in this section shall be construed to prevent the placement of incarcerated persons in protective custody settings that do not constitute restorative housing.~~

~~H.~~ The Director shall develop policies and procedures to effectuate the provisions of this section.

INTRODUCED