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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2022

A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT -- RESTRICTIVE HOUSING AT
CORRECTIONAL FACILITES ACT

Introduced By: Representatives Felix, Kazarian, Williams, Alzate, Kislak, Morales,
Potter, Giraldo, Slater, and Craven

Date Introduced: March 02, 2022

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 42 of the General Laws entitled "STATE AFFAIRS AND
2 GOVERNMENT" is hereby amended by adding thereto the following chapter:

3 CHAPTER 56.4

4 RESTRICTIVE HOUSING AT CORRECTIONAL FACILITIES ACT

5 **42-56.4-1. Legislative intent.**

6 (a) It is the policy of the State of Rhode Island that the department of corrections and the
7 facilities it operates maintain safe, secure housing for all inmates.

8 (b) Restrictive housing should only be used:

9 (1) In circumstances that pose a clear and direct threat to the safety of persons or to the safe
10 and secure operations of the facility;

11 (2) In the absence of alternatives to restrictive housing;

12 (3) For the shortest time possible; and

13 (4) With the least restrictive conditions possible.

14 **42-56.4-2. Definitions.**

15 As used in this chapter, unless the context indicates a different meaning or intent:

16 (1) "Administrative confinement" means any status or classification, except for disciplinary
17 confinement, for prisoners whose conduct may pose a serious threat to life, self, staff, other
18 prisoners, or the facility's security or orderly operation.

1 (2) "Basic necessities" means and includes weather-appropriate clothing and footwear;
2 adequate food in compliance with medical and religious accommodations, with no more than
3 twelve (12) hours between meals; access to drinking water and functioning sanitary fixtures; access
4 to a shower and hygienic items; bedding; and ventilation.

5 (3) "Department" means the department of corrections.

6 (4) "Director" means the director of the department of corrections.

7 (5) "Disciplinary confinement" means punitive confinement of a prisoner based on
8 violation of departmental rules, whether in the general population, a specialized housing unit, or
9 elsewhere.

10 (6) "General population" means classification to maximum, medium, or minimum security
11 with no restrictions placed on activities.

12 (7) "Member of a vulnerable population" means someone who:

13 (i) Is twenty-two (22) years of age or younger;

14 (ii) Is fifty-five (55) years of age or older;

15 (iii) Has a serious and persistent mental illness, as defined by the department of corrections,
16 or a mental disability, as defined in § 40.1-5-2;

17 (iv) Has a developmental disability, as defined in § 40.1-1-8.1;

18 (v) Is pregnant, in the postpartum period, or has recently suffered a miscarriage or
19 terminated a pregnancy; or

20 (vi) Has a significant auditory or visual impairment, or a serious medical condition that
21 cannot be adequately treated in restrictive housing.

22 (8) "Protective custody" means any form of separation from a prison's general population
23 for prisoners requiring additional protection for their own safety.

24 (9) "Restrictive housing" means any type of detention that involves:

25 (i) Removal of a prisoner from the general population, voluntarily or involuntarily;

26 (ii) Placement in a locked room or cell, whether alone or with another prisoner; or

27 (iii) The inability to leave the room or cell for the vast majority of the day, typically
28 eighteen (18) hours or more, to include all forms of disciplinary confinement and administrative
29 confinement.

30 (10) "Step-down plan" means an individualized program, developed by a coordinated,
31 multidisciplinary team to include mental health, case management, and security practitioners, that
32 describes:

33 (i) The specific behaviors that resulted in placement in restrictive housing;

34 (ii) The programs and services available to the prisoner to address that behavior and

- 1 promote general rehabilitation;
2 (iii) An estimated timeframe for returning to a less-restrictive classification;
3 (iv) Incentives available in order that prisoners can earn additional privileges and an
4 accelerated return to the general population; and
5 (v) A schedule for regular review of the plan and the prisoner's classification.

6 **42-56.4-3. Restrictive housing, generally.**

7 (a) The department shall maximize the amount of time that each prisoner in restrictive
8 housing spends outside of the cell by providing, as appropriate, access to recreation, education,
9 clinically appropriate treatment therapies, skill-building activities, and social interaction with staff
10 and other inmates.

11 (b) Each prisoner entering restrictive housing must be seen and assessed by a qualified
12 mental health professional or health care professional within seventy-two (72) hours of placement
13 and at least every fourteen (14) days thereafter.

14 (c) For each placement in restrictive housing, the department shall document:

15 (1) The nature of the threat to safety and security posed by the prisoner;

16 (2) The impact any restrictions in conditions of confinement may have on their health; and

17 (3) All alternatives that may be available to safely deal with the threat, other than restrictive
18 housing.

19 (d) Prisoners in restrictive housing shall have equal access to programming; personal
20 belongings in cell, including food, legal and reading materials; commissary; medical and mental
21 health care; legal assistance, including law library and notary services; and basic necessities as
22 those in general population. If provision of any such service or belongings to an individual would
23 create a significant and unreasonable risk to the safety and security of incarcerated persons, staff,
24 or the facility, such services or belongings may be withheld, on an individual basis, until it
25 reasonably appears that the risk has ended.

26 (e) Each decision to withhold services or entitlements under subsection (d) of this section
27 shall be meaningfully reviewed within twenty-four (24) hours, and every seven (7) days thereafter,
28 by the facility warden or the warden's designee and by a qualified mental health professional. Each
29 review must consider the impact of continued deprivation of services or entitlements on the person's
30 risk to safety and security, and the warden must articulate in writing, with a copy provided to the
31 incarcerated person, the specific reason why the person currently poses an unreasonable risk to
32 safety and security and why the particular services or entitlements must continue to be withheld.
33 Written approval from the director shall be required for any deprivation of services or entitlements
34 beyond three (3) days and every thirty (30) days thereafter.

1 (f) No prisoner shall be denied access to programming or work assignments solely on the
2 basis of being in restrictive housing, and the department must offer programming to prisoners in
3 restrictive housing that is substantially similar to programming offered to prisoners in the general
4 population, including accommodating classwork and education in-cell. Additionally, the
5 department must offer prisoners in restrictive housing additional out-of-cell, trauma-informed
6 therapeutic programming aimed at promoting personal development, addressing underlying causes
7 of problematic behavior resulting in placement in restrictive housing, and helping prepare for
8 discharge from restrictive housing to general population and to the community.

9 (g) Prisoners in restrictive housing shall receive a daily visit from the senior correctional
10 supervisor in charge of the unit, daily visits from a qualified health care professional, and visits
11 from members of the program staff at least weekly.

12 **42-56.4-4. Discipline; Disciplinary confinement.**

13 (a) The department shall establish maximum penalties for each level of offense. These
14 penalties should always include alternatives to disciplinary confinement. The maximum restrictive
15 housing penalty for any single rule violation or any series of related rule violations shall be no more
16 than fifteen (15) days.

17 (b) All penalties shall be proportioned to the offense.

18 (c) Disciplinary confinement shall only be considered for offenses involving violence,
19 involving escape, or posing a threat to institutional safety by encouraging others to engage in such
20 misconduct.

21 (d) All prisoners in disciplinary confinement shall receive a minimum of two (2) hours out-
22 of-cell each day.

23 (e) No prisoner shall serve more than thirty (30) days in disciplinary confinement in a sixty
24 (60) day period.

25 (f) No member of a vulnerable population shall be placed in disciplinary confinement for
26 any period of time unless the individual presents an immediate and present danger and there is no
27 reasonable alternative for placement. Such placement shall last only as long as necessary to find an
28 alternative housing placement.

29 (g) A prisoner should not be placed in restrictive housing pending investigation of a
30 disciplinary offense unless their presence in the general population would pose a danger to
31 themselves, staff, other prisoners, or the public. A prisoner's placement in restrictive housing
32 pending investigation shall be reviewed within twenty-four (24) hours by the director or the
33 director's designee. No prisoner shall remain in investigative segregation for a longer period of time
34 than the maximum term of disciplinary segregation permitted for the most serious offense charged.

1 **42-56.4-5. Administrative confinement; Protective custody.**

2 (a) Placement in administrative confinement is limited to individuals who pose an
3 imminent threat to the security of the institution, shall only be considered when it serves a specific
4 penological purpose, and must last no longer than necessary to address the specific reason(s) for
5 placement.

6 (b) All prisoners in administrative confinement shall receive a minimum of four (4) hours
7 out-of-cell each day.

8 (c) Each prisoner in administrative confinement must have their status reviewed by the
9 classification board, director, or director's designee every seven (7) days for the first sixty (60) days
10 of the prisoner's placement and at least every thirty (30) days after the first sixty (60) days.

11 (d) The department shall create an individualized step-down plan, as defined in § 42-56.4-
12 2, no later than fourteen (14) days after each placement in administrative confinement. This step-
13 down plan shall be shared with the prisoner unless specifically articulable security concerns require
14 otherwise.

15 (e) Where possible, prisoners with serious mental illness should be diverted from
16 administrative confinement and placed in a clinically appropriate alternative form of housing. Any
17 prisoner with a serious mental illness placed in administrative confinement must receive intensive,
18 clinically appropriate mental health treatment for the entirety of the placement in administrative
19 confinement.

20 (f) No prisoner classified to protective status may be held in conditions more restrictive
21 than those conditions allowed in administrative confinement.

22 **42-56.4-6. Transitional administrative confinement and step-down housing.**

23 (a) The department shall create a system of step-down and transitional housing and
24 programming for prisoners who require additional assistance in transitioning from administrative
25 confinement into the general population.

26 (b) Conditions in transitional step-down and transitional housing shall mirror, to the extent
27 possible, those conditions allowed in the general population.

28 (c) At a minimum, prisoners in step-down and transitional housing shall receive six (6)
29 hours of out-of-cell time each day.

30 **42-56.4-7. Reporting.**

31 The department of corrections shall issue a report to be made publicly available on the
32 department's website one year after the passage of this act and by January 31 of each year thereafter,
33 indicating the following, broken down by disciplinary, administrative, and transitional
34 confinement:

- 1 (1) The number of prisoners in each institution placed in restrictive housing during the past
2 year;
3 (2) The nature of the infractions and behaviors leading to the use of restrictive housing;
4 (3) The lengths of terms served in restrictive housing, including terms served consecutively
5 and cumulatively;
6 (4) The race, ethnicities, gender, and religion of all prisoners placed in restrictive housing;
7 and
8 (5) The number of members of a vulnerable population placed in restrictive housing, by
9 category promulgated in the definition thereof listed in § 42-56.4-2(7).

10 SECTION 2. Section 42-35-1 of the General Laws in Chapter 42-35 entitled
11 "Administrative Procedures" is hereby amended to read as follows:

12 **42-35-1. Definitions.**

13 As used in this chapter:

14 (1) Except as otherwise provided herein, "agency" means a state agency, authority, board,
15 bureau, commission, department, district, division, institution, office, officer, quasi-public agency,
16 or other political subdivisions created by the general assembly or the governor, other than the
17 legislature or the judiciary, that is authorized by law of this state to make rules or to determine
18 contested cases.

19 (2) "Agency action" means:

20 (i) The whole or part of an order or rule;

21 (ii) The failure to issue an order or rule; or

22 (iii) An agency's performing, or failing to perform, a duty, function, or activity or to make
23 a determination required by law.

24 (3) "Agency head" means the individual in whom, or one or more members of the body of
25 individuals in which, the ultimate legal authority of an agency is vested.

26 (4) "Agency record" means the agency rulemaking record required by § 42-35-2.3.

27 (5) "Contested case" means a proceeding, including but not restricted to, ratemaking, price
28 fixing, and licensing, in which the legal rights, duties, or privileges of a specific party are required
29 by law to be determined by an agency after an opportunity for hearing.

30 (6) "Electronic" means relating to technology having electrical, digital, magnetic, wireless,
31 optical, electromagnetic, or similar capabilities.

32 (7) "Electronic record" means a record created, generated, sent, communicated, received,
33 or stored by electronic means.

34 (8) "Final rule" means a rule promulgated under §§ 42-35-2.6 through 42-35-2.9, an

1 emergency rule promulgated under § 42-35-2.10, or a direct, final rule promulgated under § 42-35-
2 2.11.

3 (9) "Guidance document" means a record of general applicability developed by an agency
4 which lacks the force of law but states the agency's current approach to, or interpretation of, law or
5 describes how and when the agency will exercise discretionary functions. The term does not include
6 records described in subdivisions (19)(i), (ii), (iii), or (iv).

7 (10) "Index" means a searchable list in a record of subjects and titles with page numbers,
8 hyperlinks, or other connectors that link each index entry to the text to which it refers.

9 (11) "License" includes the whole or part of any agency permit, certificate, approval,
10 registration, charter, or similar form of permission required by law, but it does not include a license
11 required solely for revenue purposes.

12 (12) "Licensing" includes the agency process respecting the grant, denial, renewal,
13 revocation, suspension, annulment, withdrawal, or amendment of a license.

14 (13) "Order" means the whole or a part of a final disposition, whether affirmative, negative,
15 injunctive, or declaratory in form, of a contested case.

16 (14) "Party" means each person or agency named or admitted as a party, or properly seeking
17 and entitled as of right to be admitted as a party.

18 (15) "Person" means any individual, partnership, corporation, association, the department
19 of environmental management, governmental subdivision, or public or private organization of any
20 character other than an agency.

21 (16) "Promulgate," with respect to a rule, means the process of writing a new rule, or
22 amending or repealing an existing rule. "Promulgation" has a corresponding meaning. The process
23 of "promulgation" begins with the filing of the notice of proposed rulemaking under § 42-35-2.7
24 and ends upon the effective date of the rule. "Promulgate" also includes the completion of the
25 rulemaking process for emergency rules (§ 42-35-2.10) or direct final rules (§ 42-35-2.11), if
26 applicable.

27 (17) "Reasonable charge" means the lowest, customary charge for a service.

28 (18) "Record" means information that is inscribed on a tangible medium or that is stored
29 in an electronic or other medium and is retrievable in perceivable form.

30 (19) "Rule" means the whole or a part of an agency statement of general applicability that
31 implements, interprets, or prescribes law or policy or the organization, procedure, or practice
32 requirements of an agency and has the force of law. The term includes the amendment or repeal of
33 an existing rule. The term is used interchangeably in this chapter with the term "regulation." The
34 term does not include:

1 (i) A statement that concerns only the internal management of an agency and which does
2 not affect private rights or procedures available to the public individuals under the custody or
3 supervision of the department of corrections shall be considered members of the public for the
4 purposes of this chapter, except where disclosure of any rule or portion of a rule would endanger
5 the public welfare and security, pursuant to § 38-2-2(4)(F);

6 (ii) An intergovernmental or interagency memorandum, directive, or communication that
7 does not affect private rights or procedures available to the public;

8 (iii) An opinion of the attorney general, or an opinion of the ethics commission pursuant to
9 § 36-14-11;

10 (iv) A statement that establishes criteria or guidelines to be used by the staff of an agency
11 in performing audits, investigations, or inspections, settling commercial disputes, negotiating
12 commercial arrangements, or defending, prosecuting, or settling cases, if disclosure of the criteria
13 or guidelines would enable persons violating the law to avoid detection, facilitate disregard of
14 requirements imposed by law, or give an improper advantage to persons that are in an adverse
15 position to the state;

16 (v) A form developed by an agency to implement or interpret agency law or policy; or

17 (vi) A guidance document.

18 (20) "Sign" means, with present intent, to authenticate a record:

19 (i) To execute a tangible symbol; or

20 (ii) To attach to or logically associate with the record an electronic symbol, sound, or
21 process.

22 (21) "Small business" shall have the same meanings that are provided for under 13 C.F.R.,
23 Pt. 121, as may be amended from time to time.

24 (22) "Small business advocate" means the person appointed by the chief executive officer
25 of the commerce corporation as provided in § 42-64-34.

26 (23) "State register" means the publication required under chapter 8.2 of title 42.

27 (24) "Website" means a website on the internet or other similar technology or successor
28 technology that permits the public to search a database that archives materials required to be
29 published or exhibited by the secretary of state or an agency under this chapter.

30 (25) "Writing" means a record inscribed on a tangible medium. "Written" has a
31 corresponding meaning.

32 SECTION 3. This act shall take effect upon passage.

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO STATE AFFAIRS AND GOVERNMENT -- RESTRICTIVE HOUSING AT
CORRECTIONAL FACILITES ACT

1 This act would establish conditions, policies and procedures for the restrictive housing of
2 inmates at correctional facilities in Rhode Island with the least restrictive conditions possible, the
3 guidelines and restrictions for disciplinary confinement, transitional disciplinary confinement and
4 step-down housing. This act would also require publicly available reporting of restrictive housing
5 statistics on the website of the department of corrections on an annual basis.

6 This act would take effect upon passage.

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