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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2024

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A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT -- REFORM RESTRICTIVE  
CONFINEMENT ACT

Introduced By: Senator Jonathon Acosta

Date Introduced: May 06, 2024

Referred To: Senate 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 REFORM RESTRICTIVE CONFINEMENT ACT

5 **42-56.4-1. Definitions.**

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

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

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

14 (3) "Cell" means any room, area or space that is primarily used for the confinement of  
15 prisoners; or any room, area or space that is less than four hundred square feet (400 sq. ft.),  
16 regardless of use or purpose; or any indoor room that is solely accessible to one prisoner at a time.  
17 Shared spaces whose primary purpose is congregate social interaction, education, programming,  
18 rehabilitation, or physical and psychological wellness, including recreation areas, classrooms,

1 libraries, and spaces used for medical evaluation and treatment, shall not constitute "cells."

2 (4) "Department" means the department of corrections.

3 (5) "Director" means the director of the department of corrections.

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

7 (7) "General population" means classification to maximum, medium, or minimum security  
8 with no restrictions placed on activities or privileges.

9 (8) "Member of a vulnerable population" means someone who:

10 (i) Has a serious and persistent mental illness, as defined by the department of corrections,  
11 or a psychiatric disability, as defined in § 40.1-5-2;

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

13 (iii) Is pregnant, in the postpartum period, or has recently suffered a miscarriage or  
14 terminated a pregnancy; or

15 (iv) Has a significant auditory or visual impairment, or a serious medical condition that  
16 cannot be adequately treated in restrictive housing or which is medically contraindicated to  
17 placement in restrictive housing.

18 **42-56.4-2. Discipline -- Disciplinary confinement.**

19 (a) The department shall establish maximum penalties for each level of offense. The  
20 maximum restrictive housing penalty for any single rule violation or any series of related rule  
21 violations shall be no more than fifteen (15) days.

22 (b) All prisoners in disciplinary confinement shall receive a minimum of two (2) hours  
23 out-of-cell each day, except in the case of a lockdown. In no event shall a lockdown last more than  
24 twenty-four (24) hours.

25 (c) No prisoner shall serve more than fifteen (15) days in disciplinary confinement in a  
26 thirty (30) day period.

27 (d) Any prisoner that is not in disciplinary confinement must be provided with three (3) or  
28 more hours of out-of-cell time.

29 **42-56.4-3. Reporting.**

30 (a) The department of corrections shall issue a report ("annual restrictive housing report")  
31 to be made publicly available on the department's website one year after the effective date of this  
32 chapter and by January 31 of each year thereafter, containing the following information, broken  
33 out by disciplinary, administrative, and transitional confinement:

34 (1) The number of prisoners in each institution placed in restrictive housing during the past

1 year;

2 (2) The nature of the infractions and behaviors leading to the use of restrictive housing;

3 (3) The lengths of terms served in restrictive housing, including terms served consecutively  
4 and cumulatively;

5 (4) The races, ethnicities, genders, and religions of all prisoners placed in restrictive  
6 housing;

7 (5) The number of members of a vulnerable population placed in restrictive housing, by  
8 category promulgated in the definition thereof listed in § 42-56.4-2; and

9 (6) The average weekly out-of-cell time provided to prisoners in each category of  
10 restrictive housing.

11 (b) The restrictive housing oversight committee, as created in § 42-26-20, may require the  
12 department to publish additional information, in addition to the fields delineated by statute, in the  
13 annual restrictive housing report.

14 **42-56.4-4. Declaratory judgment.**

15 (a) Any prisoner may bring an action for declaratory judgment in the superior court of  
16 Providence county, when it is alleged that:

17 (1) The department of corrections or an officer thereof failed to perform a duty enjoined  
18 upon it by this chapter, or acted in violation of lawful procedure as required by this chapter; or

19 (2) A department rule, or its threatened application, interferes with or impairs, or threatens  
20 to interfere with or impair, the legal rights or privileges of the plaintiff under this chapter or the  
21 state or federal Constitution.

22 (b) A declaratory judgment may be rendered whether or not the plaintiff has requested the  
23 agency to pass upon the validity or applicability of the rule in question.

24 SECTION 2. Chapter 42-26 of the General Laws entitled "Public Safety Grant  
25 Administration Office" is hereby amended by adding thereto the following section:

26 **42-26-20. Restrictive housing oversight committee.**

27 (a) There is hereby created within the public safety grant administration office, pursuant to  
28 the provisions of § 42-26-7, the restrictive housing oversight committee ("committee") for the  
29 purpose of monitoring the use of restrictive housing at the department of corrections.

30 (b) The committee shall consist of the following five (5) members who shall assemble  
31 annually or more often at the call of the chairperson or upon petition of a majority of its members:

32 (1) One who has been previously sentenced to spend time in restrictive housing, appointed  
33 by the Black, Latino, Indigenous, Asian-American, and Pacific Islander Caucus of the general  
34 assembly;

1           (2) One who has expertise in law and a demonstrated interest in advancing the rights and  
2 welfare of incarcerated persons, appointed by the speaker of the house of representatives;

3           (3) One who has expertise in the provision of mental health care to incarcerated persons or  
4 formerly incarcerated persons, appointed by the president of the senate;

5           (4) One who has a demonstrated interest in advancing the rights and welfare of incarcerated  
6 persons appointed by the governor; and

7           (5) The director of the department of corrections, or designee.

8           (c) A chair of the committee shall be selected by the members of the committee.

9           (d) Of the members first appointed to the committee, two (2) members shall serve a term  
10 of two (2) years, two (2) members shall serve a term of one year, and thereafter, members shall  
11 serve a term of two (2) years. Members shall continue to serve until their successor is duly  
12 appointed and qualified. Any vacancy on the oversight committee shall be filled in the same manner  
13 as the original appointment.

14           (e) The committee shall perform the following functions:

15           (1) Appoint a restrictive housing ombudsperson ("ombudsperson") based on whatever  
16 procedure is determined by the committee;

17           (2) Review and supervise the actions of the ombudsperson;

18           (3) Meet not less than quarterly to bring matters to the ombudsperson's attention and to  
19 consult on their services, findings and recommendations; and

20           (4) Convene semiannual public hearings to discuss the ombudsperson's services, findings  
21 and recommendations.

22           (f) The ombudsperson shall be empowered to:

23           (1) Receive and investigate complaints related to incarcerated persons' health, safety,  
24 welfare, and rights;

25           (2) Identify issues within the department of corrections related to restrictive housing;

26           (3) Ensure compliance with relevant statutes, rules, and policies pertaining to restrictive  
27 housing;

28           (4) Provide information to inmates, probationers, and parolees, and their families related  
29 to restrictive housing; and

30           (5) Promote public awareness and understanding of the rights and responsibilities of  
31 individuals in prison and conditions related to restrictive housing.

32           (g) The ombudsperson shall conduct random biannual inspections of restrictive housing  
33 areas in each facility, including cells, recreation areas, and programming spaces, and shall visit  
34 different facilities on each inspection. Neither the committee nor the ombudsperson shall announce

1 an inspection to any individual or entity outside of the committee before the inspection occurs. The  
2 department shall ensure full access to the facility, inmates, and staff as part of these inspections  
3 consistent with this section.

4 (h) All oral and written communications, and records relating to such communications  
5 between a person in the custody of the department of corrections and the ombudsperson or  
6 committee, including, but not limited to, the identity of a complainant, the details of the  
7 communications, and the ombudsperson's findings shall be confidential and shall not be disclosed  
8 without the consent of such person, except that the committee or ombudsperson may disclose  
9 without the consent of such person general findings or policy recommendations based on such  
10 communications; provided no individually identifiable information is disclosed.

11 (i) Notwithstanding any provision of the general laws concerning the confidentiality of  
12 records and information, the ombudsperson shall have access to, including the right to inspect and  
13 copy, any non-privileged records necessary to carry out their responsibilities.

14 (j) In the performance of the responsibilities provided for in this section, the ombudsperson  
15 may communicate privately with any person in the custody of the department of corrections. Such  
16 communications shall be confidential except as provided in this section.

17 (k) Members of the committee and ombudsperson shall meet with the governor and the  
18 director of the department of corrections at least two (2) times each year to report on the work and  
19 findings of the committee.

20 (l) A majority of the members appointed to the committee shall constitute a quorum, which  
21 shall be necessary for the committee to conduct business. A majority vote of the members present  
22 shall be required for action of the committee.

23 (m) The general assembly shall annually appropriate such sums as it may deem necessary  
24 for the payment of any ombudsperson's salary and for the payment of office expenses and other  
25 actual expenses incurred by the committee or any ombudsperson's in the performance of their  
26 duties; and the state controller is hereby authorized and directed to draw their orders upon the  
27 general treasurer for the payment of such sum or sums, or so much thereof, as may from time to  
28 time be required, upon receipt by them of proper vouchers approved by any ombudsperson's or  
29 committee.

30 SECTION 3. Section 42-35-1 of the General Laws in Chapter 42-35 entitled  
31 "Administrative Procedures" is hereby amended to read as follows:

32 **42-35-1. Definitions.**

33 As used in this chapter:

34 (1) Except as otherwise provided herein, "agency" means a state agency, authority, board,

1 bureau, commission, department, district, division, institution, office, officer, quasi-public agency,  
2 or other political subdivisions created by the general assembly or the governor, other than the  
3 legislature or the judiciary, that is authorized by law of this state to make rules or to determine  
4 contested cases.

5 (2) “Agency action” means:

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

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

8 (iii) An agency’s performing, or failing to perform, a duty, function, or activity or to make  
9 a determination required by law.

10 (3) “Agency head” means the individual in whom, or one or more members of the body of  
11 individuals in which, the ultimate legal authority of an agency is vested.

12 (4) “Agency record” means the agency rulemaking record required by § 42-35-2.3.

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

16 (6) “Electronic” means relating to technology having electrical, digital, magnetic, wireless,  
17 optical, electromagnetic, or similar capabilities.

18 (7) “Electronic record” means a record created, generated, sent, communicated, received,  
19 or stored by electronic means.

20 (8) “Final rule” means a rule promulgated under §§ 42-35-2.6 through 42-35-2.9, an  
21 emergency rule promulgated under § 42-35-2.10, or a direct, final rule promulgated under § 42-35-  
22 2.11.

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

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

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

32 (12) “Licensing” includes the agency process respecting the grant, denial, renewal,  
33 revocation, suspension, annulment, withdrawal, or amendment of a license.

34 (13) “Order” means the whole or a part of a final disposition, whether affirmative, negative,

1 injunctive, or declaratory in form, of a contested case.

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

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

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

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

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

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

21 (i) A statement that concerns only the internal management of an agency and which does  
22 not affect private rights or procedures available to the public. [Individuals under the custody or](#)  
23 [supervision of the department of corrections shall be considered members of the public for the](#)  
24 [purposes of this chapter, except where disclosure of any rule or portion of a rule would endanger](#)  
25 [the public welfare and security, pursuant to § 38-2-2\(4\)\(F\)](#);

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

28 (iii) An opinion of the attorney general, or an opinion of the ethics commission pursuant to  
29 § 36-14-11;

30 (iv) A statement that establishes criteria or guidelines to be used by the staff of an agency  
31 in performing audits, investigations, or inspections, settling commercial disputes, negotiating  
32 commercial arrangements, or defending, prosecuting, or settling cases, if disclosure of the criteria  
33 or guidelines would enable persons violating the law to avoid detection, facilitate disregard of  
34 requirements imposed by law, or give an improper advantage to persons that are in an adverse

1 position to the state;

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

3 (vi) A guidance document.

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

5 (i) To execute a tangible symbol; or

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

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

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

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

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

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

18 SECTION 4. This act shall take effect upon passage.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF

A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT -- REFORM RESTRICTIVE  
CONFINEMENT ACT

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1           This act would establish a restrictive housing oversight committee for the purpose of  
2 monitoring the use of restrictive housing, as well as disciplinary confinement at the department of  
3 corrections. This act would also authorize the committee to hire an ombudsperson to assist in its  
4 oversight duties.

5           This act would take effect upon passage.

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