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HOUSE BILL NO. 795

Offered January 10, 2018

Prefiled January 9, 2018

A *BILL to amend the Code of Virginia by adding a section numbered 53.1-39.1, relating to isolated confinement in prisons prohibited; exceptions.*

Patron—Hope

Referred to Committee on Militia, Police and Public Safety

Be it enacted by the General Assembly of Virginia:**1. That the Code of Virginia is amended by adding a section numbered 53.1-39.1 as follows:****§ 53.1-39.1. Isolated confinement prohibited; exceptions.****A. As used in this section:**

"Isolated confinement" means confinement of an inmate to his cell for more than 20 hours per day.

"Member of a vulnerable population" means any inmate who (i) is 21 years of age or younger; (ii) is 55 years of age or older; (iii) has a mental illness as defined in § 37.2-100; (iv) has a history of psychiatric hospitalization; (v) has recently exhibited conduct, including self-mutilation, indicating the need for further observation or evaluation to determine whether he has a mental illness; (vi) has a developmental disability as defined in § 37.2-100; (vii) has a serious medical condition that cannot be treated effectively in isolated confinement; (viii) is pregnant, is in the postpartum period, or has recently suffered a miscarriage or terminated a pregnancy; (ix) has a significant auditory or visual impairment; or (x) is perceived to be lesbian, gay, bisexual, transgender, or intersex.

B. Except as provided in subsection C, a member of a vulnerable population shall not be placed in isolated confinement and an inmate who is not a member of a vulnerable population shall not be placed in isolated confinement for longer than 15 consecutive days or in excess of 20 days in any 60-day period.

C. Any inmate may be placed in isolated confinement if:

1. A facility-wide lockdown is required;

2. There is reasonable cause to believe that isolated confinement is necessary for reducing a substantial risk of immediate serious harm to such inmate or others as evidenced by recent threats or conduct, in which case such inmate shall be subject to the least restrictive conditions as practicable and only for as long as necessary to reduce the substantial risk of immediate serious harm; or

3. A medical professional has determined that such inmate should be placed in medical isolation.

D. Any inmate placed in isolated confinement shall receive a comprehensive medical and mental health evaluation conducted by a medical professional within 12 hours of confinement. Such evaluation shall be conducted at the end of every 10-day period that the inmate remains in isolated confinement.

E. An inmate may be placed in isolated confinement if such inmate voluntarily consents in writing to being placed in protective custody. The inmate may revoke his consent to protective custody at any time. An inmate in protective custody shall be subject to the least restrictive conditions as are practicable and necessary to maintain the safety of the inmate and the correctional facility. An inmate in protective custody shall, at a minimum, be offered (i) access to educational opportunities and programmatic opportunities consistent with his safety and any requirements of federal or state law; (ii) at least four hours a day outside of isolated confinement, including at least one hour of daily exercise with access to outdoor recreation, weather permitting; (iii) access to personal property, including televisions, radios, and books and other printed material; and (iv) access to the same number of showers, visits, and telephone calls as are offered to other inmates not in isolated confinement.

F. The Department shall create an administrative process by which an inmate may contest his isolated confinement within 72 hours of being placed in isolated confinement. The process shall include a hearing before an independent hearing officer. The inmate shall have the right to appear at the hearing, present evidence, and be represented by counsel. The inmate placed in isolated confinement shall receive a written notification of the reasons for and duration of such confinement. No inmate may be placed in isolated confinement for disciplinary reasons for longer than 72 hours without the written approval of the Director.

G. The Department shall create policies and procedures consistent with the provisions of this section, including requiring training for Department personnel on (i) the standard for the use of isolated confinement, (ii) recognition of the symptoms of mental illness and the consequences of untreated mental illness, (iii) de-escalation techniques, (iv) the side effects of psychiatric medications, and (v) the psychological effects of prolonged isolated confinement.

59 *H. The Department shall report to the Governor and the General Assembly on or before June 30 and*
60 *December 31 of each year the following information:*
61 *1. The total prison population;*
62 *2. The number of inmates who have been placed in isolated confinement and the age, sex, gender*
63 *identity, and ethnicity of such inmates;*
64 *3. The number of inmates who are a member of a vulnerable population who have been placed in*
65 *isolated confinement and the category of vulnerable population of such inmates;*
66 *4. The average length and median length of isolated confinement for (i) inmates placed in isolated*
67 *confinement and (ii) inmates who are a member of a vulnerable population who have been placed in*
68 *isolated confinement, calculated for each category of vulnerable population;*
69 *5. The number of inmates who have been placed in isolated confinement who have attempted to harm*
70 *themselves or others; and*
71 *6. The number of inmates who have been placed in isolated confinement who have been released*
72 *from the correctional facility while placed in isolated confinement.*
73 **2. That the Joint Subcommittee to Study Mental Health Services in the Commonwealth in the**
74 **Twenty-First Century shall study the prevalence of mental illness in prisons and submit its**
75 **findings and recommendations to the Governor and the General Assembly by December 1, 2019.**
76 **In its study, the Joint Subcommittee shall (i) evaluate the effects of mental illness in prison,**
77 **including for inmates in isolated confinement; (ii) evaluate the mental health services available in**
78 **prison, including the services available for inmates in isolated confinement; and (iii) determine**
79 **how mental health services in prisons should be organized, delivered, and funded to meet the**
80 **mental health needs of inmates, including how such services should be organized, delivered, and**
81 **funded to successfully transfer more inmates out of isolated confinement.**