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SENATE BILL NO. 108

Offered January 12, 2022

Prefiled January 6, 2022

A *BILL to amend the Code of Virginia by adding sections numbered 53.1-39.2 and 66-20.1, relating to correctional facilities; use of isolated confinement.*

Patrons—Morrissey, Vogel, Boysko, Ebbin, Favola and Hashmi; Delegates: Hope, Rasoul and Subramanyam

Referred to Committee on Rehabilitation and Social Services

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding sections numbered 53.1-39.2 and 66-20.1 as follows:

§ 53.1-39.2. 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, alone or with another incarcerated person, for 20 hours or more per day.

"Medical evaluation" means one 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 licensed practical nurse licensed to practice medicine 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 incarcerated person to be placed in isolated confinement.

"Mental health professional" is a licensed mental health professional member who is trained in mental health evaluations.

B. No incarcerated person in a state correctional facility shall be placed in isolated confinement, other than when deemed necessary by a medical practitioner. Cell confinement that is implemented due to medical or mental health treatment shall be done in a manner that is consistent with the signed recommendations of a medical practitioner and within a clinical area in the correctional facility or in as close proximity to a medical or mental health unit as possible.

C. Notwithstanding the provisions of subsection B, isolated confinement may be permitted for an incarcerated person in a state correctional facility in the following circumstances:

1. If the facility administrator determines that the incarcerated person needs to 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 in any one 60-day period, and the facility administrator shall:

a. Make a written record of the facts and circumstances that necessitated the incarcerated person's placement in isolated confinement, to be kept in the incarcerated person's institutional file;

b. Prepare a written action plan, to be kept in the incarcerated person's institutional file, describing how the correctional facility will transition the incarcerated person out of isolated confinement at the earliest opportunity;

c. Ensure that the incarcerated person receives an initial medical and mental health evaluation within 24 hours of placement in isolated confinement; and

d. Notify the Regional Administrator in writing that the incarcerated person was placed in isolated confinement in accordance with this subdivision 1.

2. If the facility administrator determines that a lockdown is required to ensure the safety of the incarcerated persons in the facility, and he also requires isolated confinement of one or more incarcerated persons, then such incarcerated persons may be placed in isolated confinement, provided that the facility administrator documents in writing the housing units subject to the lockdown, the specific reasons why any lockdown lasting for more than 24 hours is necessary, and why less-restrictive interventions are insufficient to accomplish the facility's safety goals. Such documentation shall be provided to the Director and published on the Department's website.

58 3. If the facility administrator determines that the incarcerated person needs to be placed in isolated
59 confinement for his own protection, but only as follows:

60 a. An incarcerated person may be placed in isolated confinement with informed, voluntary consent
61 when there is reasonable cause to believe that such confinement is necessary to prevent reasonably
62 foreseeable harm to the incarcerated person, provided that:

63 (1) When an incarcerated person makes an informed voluntary request to be placed in an isolated
64 confinement setting for his own protection, the facility shall bear the burden of establishing a basis for
65 refusing the request; and

66 (2) An incarcerated person who is in isolated confinement for his own protection based on his
67 informed voluntary request may opt out of that status by providing informed voluntary refusal of that
68 status.

69 b. An incarcerated person may be placed in isolated confinement for his own protection without his
70 informed, voluntary consent when there is clear and convincing evidence that such confinement is
71 necessary to prevent reasonably foreseeable harm to the incarcerated person.

72 c. Before placing the incarcerated person in isolated confinement for his own protection, the facility
73 administrator shall place an incarcerated person in a less-restrictive setting, including by transfer to the
74 general population of another institution or to a special-purpose housing unit for incarcerated persons
75 who face similar threats, unless the incarcerated person faces a security risk so great that no
76 less-restrictive setting would be sufficient or practicable to ensure the incarcerated person's safety.

77 d. An incarcerated person placed in isolated confinement for his own protection shall receive similar
78 opportunities for activities, movement, and social interaction, taking into account his safety and the
79 safety of others, as are provided to incarcerated persons in the general population of the facility.

80 e. An incarcerated person who has been placed in isolated confinement for his own protection and is
81 subject to removal from such confinement shall be provided with a timely and meaningful opportunity to
82 contest the removal.

83 f. All voluntary and involuntary placements in isolated confinement under this subdivision 3 shall be
84 reviewed every 48 hours and the reason why a less-restrictive setting could not be utilized must be
85 recorded in writing by the facility administrator and placed in the incarcerated person's institutional
86 file.

87 D. All incarcerated persons who are neither in isolated confinement nor in full privilege general
88 population shall be offered a minimum of four hours of out-of-cell programmatic interventions or other
89 congregate activities per day, including classes, work assignments, or therapeutic treatment aimed at
90 promoting personal development or addressing underlying causes of problematic behavior.
91 Programmatic interventions and congregate activities shall be consistent with those offered to full
92 privilege general population. Additionally, a minimum of one hour of recreation must be provided and
93 shall take place in a congregate setting unless exceptional circumstances mean doing so would create a
94 significant and unreasonable risk to the safety and security of other incarcerated persons, staff, or the
95 facility.

96 E. Nothing in this section shall be construed to prevent the placement of incarcerated persons in
97 protective custody settings that do not constitute isolated confinement.

98 F. In any event of an incarcerated person's placement in isolated confinement, the facility
99 administrator shall document the date and duration of such placement, as well as the statutory basis
100 under this section for such placement. Such documentation shall be included in the incarcerated person's
101 institutional file.

102 G. The Director shall develop policies and procedures, and submit proposed regulations, to
103 effectuate the provisions of this section.

104 **§ 66-20.1. Isolated confinement; restrictions on use.**

105 A. As used in this section:

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

108 "Isolated confinement" means confinement of a juvenile to a cell, alone or with someone else, for 20
109 hours or more per day.

110 "Medical evaluation" means one that is done for the purpose of determining whether the juvenile
111 needs medical treatment and shall be done in a manner that is consistent with the signed
112 recommendations of a medical practitioner.

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

116 "Mental health evaluation" means an evaluation that is carried out by a mental health professional
117 for the purpose of determining the mental health needs of the juvenile and whether it is safe for the
118 juvenile to be placed in isolated confinement.

119 "Mental health professional" is a licensed mental health professional member who is trained in

120 mental health evaluations.

121 B. No juvenile in a juvenile correctional facility shall be placed in isolated confinement, other than
122 for the purpose of providing medical or mental health treatment. Isolated confinement that is
123 implemented due to medical or mental health treatment shall be done in a manner that is consistent
124 with the signed recommendations of a medical practitioner.

125 C. Notwithstanding the provisions of subsection B, isolated confinement may be permitted for a
126 juvenile in a juvenile correctional facility in the following circumstances:

127 1. If the facility administrator determines that the juvenile needs to be placed in isolated confinement
128 to prevent an imminent threat of physical harm to the juvenile or another person, the juvenile may be
129 placed in isolated confinement for no longer than 24 hours in one 60-day period, and the facility
130 administrator shall:

131 a. Make a written record of the facts and circumstances that necessitated the juvenile's placement in
132 isolated confinement, to be kept in the juvenile's institutional file;

133 b. Prepare a written action plan, to be kept in the juvenile's institutional file, describing how the
134 correctional facility will transition the juvenile out of isolated confinement at the earliest opportunity;

135 c. Ensure that the juvenile receives an initial medical and mental health evaluation within four hours
136 of placement in isolated confinement and follow-up evaluations at least every hour unless deemed
137 unnecessary by a medical practitioner, and in either case, a medical practitioner shall document in
138 writing the reasons why an hourly evaluation is necessary or unnecessary; and

139 d. Notify the Director in writing that the juvenile was placed in isolated confinement in accordance
140 with this subdivision 1.

141 2. If the facility administrator determines that the juvenile needs to be placed in isolated confinement
142 for his own protection, but only when such confinement is necessary to prevent reasonably foreseeable
143 harm to the juvenile, provided that:

144 a. Before placing the juvenile in isolated confinement for his own protection, the facility
145 administrator shall place the juvenile in a less-restrictive setting, including transfer to another
146 institution, unless the juvenile faces a security risk so great that no less-restrictive setting would be
147 sufficient or practicable to ensure the juvenile's safety.

148 b. A juvenile placed in isolated confinement for his own protection shall receive similar opportunities
149 for activities, programming, movement, and social interaction, taking into account his safety and the
150 safety of others, as are provided to other juveniles in the facility who are not in isolated confinement.

151 c. A juvenile who has been placed in isolated confinement for his own protection and is subject to
152 removal from such confinement shall be provided with a timely and meaningful opportunity to contest
153 the removal.

154 d. All placements in isolated confinement under this subdivision 3 shall be reviewed every 48 hours
155 and the reason why a less-restrictive setting could not be utilized must be recorded in writing by the
156 facility administrator and placed in the juvenile's institutional file.

157 3. If the facility administrator determines that a facility-wide lockdown is required to ensure the
158 safety of the juveniles in the facility, and also requires isolated confinement of one or more juveniles,
159 then such juveniles may be placed in isolated confinement provided that the facility administrator
160 documents in writing specific reasons why any lockdown lasting for more than 24 hours is necessary,
161 and why less restrictive interventions are insufficient to accomplish the facility's safety goals. Such
162 documentation shall be provided to the Director and published on the Department's website.

163 D. All juveniles who are neither in isolated confinement nor in full privilege general population shall
164 be offered a minimum of four hours of out-of-cell programmatic interventions or other congregate
165 activities per day, including classes, work assignments, or therapeutic treatment aimed at promoting
166 personal development or addressing underlying causes of problematic behavior, in addition to a
167 minimum of two hours of recreation per day. Such recreation shall take place in a congregate setting
168 unless exceptional circumstances mean doing so would create a significant and unreasonable risk to the
169 safety and security of other juveniles, staff, or the facility.

170 E. Nothing in this section shall be construed to prevent the placement of juveniles in protective
171 custody settings that do not constitute isolated confinement.

172 F. In any event of a juvenile's placement in isolated confinement, the facility administrator shall
173 document the date and duration of such placement, as well as the statutory basis under this section for
174 such placement. Such documentation shall be included in the juvenile's institutional file.

175 G. The Director shall develop policies and procedures, and submit proposed regulations, to
176 effectuate the provisions of this section.

177 2. That the provisions of this act shall become effective on July 1, 2023.