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## HOUSE BILL NO. 2487

Offered January 20, 2023

A BILL to amend the Code of Virginia by adding a section numbered 53.1-39.2, relating to correctional facilities; use of solitary confinement and restrictive housing.

Patrons—Davis, Hope, Scott, D.L. and Wilt

Referred to Committee on Public Safety

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 53.1-39.2 as follows:

§ 53.1-39.2. *Solitary confinement and restrictive housing; restrictions on use.*

A. As used in this section:

"Extended restrictive housing" means housing that separates the incarcerated person from contact with the general population while restricting such incarcerated person to his cell for at least 22 hours per day and for more than 30 days for the safe and secure operation of the facility.

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

"Medical practitioner" means a physician, physician's assistant, or nurse practitioner 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" means the same as that term is defined in § 54.1-2400.1 who is trained in mental health evaluations.

"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 under which such incarcerated person 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. Such programmatic interventions and congregate activities shall be consistent with those offered to the full privilege general population. Additionally, a minimum of one hour of recreation shall be provided and take place in a congregate setting unless exceptional circumstances mean doing so would create a significant and unreasonable risk to the safety and security of other incarcerated persons, the staff, or the facility.

"Restrictive housing" means housing that separates the incarcerated person from contact with the general population while restricting such incarcerated person to his cell for at least 22 hours per day for the safe and secure operation of the facility.

"Solitary confinement" means housing that separates the incarcerated person from contact with the general population for more than 24 hours.

B. No incarcerated person in a state correctional facility shall be placed in solitary confinement unless such incarcerated person (i) requests placement in solitary confinement or (ii) gives informed, voluntary consent to placement in solitary confinement, provided that:

1. When an incarcerated person makes a request to be placed in solitary confinement for his own protection, the facility shall bear the burden of establishing a basis for refusing the request;

2. An incarcerated person who is in solitary confinement for his own protection based on his request or with his informed, voluntary consent may request to be removed from solitary confinement;

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

4. An incarcerated person who has been placed in solitary 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.

C. If an incarcerated person is placed in solitary confinement pursuant to subsection B, (i) such placement shall be reviewed every 48 hours and the reason why a less-restrictive setting could not be utilized shall be recorded in writing by the facility administrator and placed in the incarcerated person's institutional file and (ii) 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 such

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59 documentation in the incarcerated person's institutional file.

60 D. No incarcerated person in a state correctional facility shall be placed in restrictive housing or  
61 extended restrictive housing.

62 E. An incarcerated person in a state correctional facility may be placed in restorative housing.  
63 Notwithstanding the requirement that an incarcerated person placed in restorative housing be offered a  
64 minimum of four hours of out-of-cell programmatic interventions or other congregate activities per day  
65 pursuant to subsection A, an incarcerated person in restorative housing may be offered less than four  
66 hours of out-of-cell programmatic interventions or other congregate activities per day if the facility  
67 administrator determines that a lockdown is required to ensure the safety of the incarcerated persons in  
68 the facility, provided that the facility administrator documents in writing the housing units subject to the  
69 lockdown, the specific reasons why any lockdown lasting for more than 24 hours is necessary, and why  
70 less-restrictive interventions are insufficient to accomplish the facility's safety goals. Such documentation  
71 shall be provided to the Director and published on the Department's website.

72 F. The Director shall have a defined policy and procedure for the process of transitioning an  
73 incarcerated person placed in restorative housing out of such restorative housing and back to the  
74 general population of the facility.

75 G. Nothing in this section shall be construed to prevent the placement of incarcerated persons in  
76 protective custody settings that do not constitute solitary confinement or restrictive housing.

77 H. The Director shall develop policies and procedures, and submit proposed regulations, to  
78 effectuate the provisions of this section.