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## HOUSE BILL NO. 2487

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Public Safety  
on January 27, 2023)

(Patron Prior to Substitute—Delegate Davis)

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

**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. Restorative housing; restrictions on use.**

A. As used in this section:

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

"Medical evaluation" means an evaluation that is done for the purpose of determining whether the incarcerated person needs medical treatment and that 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 practical nurse licensed 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 person to be placed in restorative housing.

"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 confinement of an incarcerated person to a cell for more than 20 hours, regardless of the name of the housing unit in which such confinement occurs.

B. No incarcerated person in a state correctional facility shall be placed in restorative housing unless (i) such incarcerated person requests placement in restorative housing with informed voluntary consent, (ii) such incarcerated person needs such confinement for his own protection, or (iii) there is a need to prevent an imminent threat of physical harm to the incarcerated person or another person, provided that:

1. When an incarcerated person makes a request to be placed in restorative housing 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 restorative housing for his own protection based on his request or with his informed, voluntary consent may opt out of restorative housing by voluntarily removing his consent to remain in restorative housing by providing informed voluntary refusal;

3. An incarcerated person placed in restorative housing 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;

4. An incarcerated person who has been placed in restorative housing 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;

5. Except in the case of an incarcerated person who presents an active and imminent physical danger to himself and others, an incarcerated person cannot be placed in restorative housing for longer than 15 consecutive days, including any investigative time period, in any 60-day period; and

6. An incarcerated person who has been placed in restorative housing shall be offered a minimum of four hours of out-of-cell programmatic interventions or other congregate activities per day aimed at promoting personal development or addressing underlying causes of problematic behavior, including one hour of recreation in a congregate setting unless exceptional circumstances mean that doing so would create significant and unreasonable risk to the safety and security of other incarcerated persons, the staff, or the facility.

C. If an incarcerated person is placed in restorative housing pursuant to subsection B, (i) such placement shall be reviewed once a week 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; (ii) the facility administrator shall document an action plan for transitioning the incarcerated person out of restorative housing as soon as safely possible; and (iii) 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 all such documentation in the incarcerated person's institutional file.

D. An incarcerated person may be offered less than four hours of out-of-cell programmatic

60 interventions or other congregate activities per day only in the circumstance that the facility  
61 administrator determines a lockdown is required to ensure the safety of the incarcerated persons in the  
62 facility, provided that the facility administrator documents in writing (i) the housing units subject to the  
63 lockdown, (ii) the specific reasons why any lockdown lasting for more than 24 hours is necessary, and  
64 (iii) why less restrictive interventions are insufficient to accomplish the facility's safety goals. Such  
65 documentation shall be provided to the Director and published on the Department's website.

66 E. The facility administrator shall ensure that any incarcerated person placed in restorative housing,  
67 for any reason, is provided with a medical evaluation and a mental health evaluation within one  
68 workday of such placement, unless such evaluation was completed within the previous week.

69 F. The facility administrator shall have a defined and publicly available policy and procedure for the  
70 process of transitioning an incarcerated person placed in restorative housing out of such restorative  
71 housing and back to the general population of the facility, subject to the approval of the Director.

72 G. Nothing in this section shall be construed to prevent the placement of incarcerated persons in  
73 protective custody settings that do not constitute restorative housing.

74 H. The Director shall develop policies and procedures and submit proposed regulations to effectuate  
75 the provisions of this section.