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SENATE BILL NO. 887

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Public Safety
on February 10, 2023)

(Patron Prior to Substitute—Senator Morrissey)

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 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 special purpose bed assignments operated under maximum security regulations and procedures and utilized for the personal protection or custodial management of an incarcerated person.

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, (iii) there is a need to prevent an imminent threat of physical harm to the incarcerated person or another person; or (iv) such person's behavior threatens the orderly operation of the facility, 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 (i) 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 (ii) his placement shall be reviewed for assignment into protective custody;

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; and

5. 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, which may include 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 interventions or other congregate activities per day only in the circumstance that the facility

60 administrator determines a lockdown is required to ensure the safety of the incarcerated persons in the
61 facility.

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

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

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

70 H. The Director shall develop policies and procedures to effectuate the provisions of this section.