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## SENATE BILL NO. 887

Offered January 11, 2023

Prefiled January 4, 2023

A *BILL to amend the Code of Virginia by adding a section numbered 53.1-39.2, relating to state correctional facilities; use of isolated confinement.*

Patrons—Morrissey and Favola; Delegate: Kory

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 a section numbered 53.1-39.2 as follows:**

**§ 53.1-39.2. Isolated confinement prohibited; exceptions.**

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 for 17 hours or more per day, regardless of the name of the housing unit in which such confinement occurs.

"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 incarcerated person to be placed in isolated confinement.

"Mental health professional" means the same as that term is defined in § 54.1-2400.1 and who is trained in mental health evaluations.

B. No incarcerated person in a state correctional facility shall be placed in isolated confinement except in the following circumstances:

1. When deemed necessary for medical treatment by a medical practitioner, in which case such confinement and medical treatment shall be conducted in a manner that is consistent with the signed recommendations of the medical practitioner and within a clinical area in the correctional facility or in as close proximity to a medical unit as possible.

2. 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, in which case 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 a medical and mental health evaluation within one working day of placement in isolated confinement by an appropriate medical practitioner and mental health professional; and

d. Notify the regional administrator in writing that the incarcerated person was placed in isolated confinement in accordance with this subdivision 2.

3. If the facility administrator determines that a lockdown is required to ensure the safety of the incarcerated persons in the facility, and also requires isolated confinement of one or more incarcerated persons, in which case 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.

4. If the facility administrator determines that the incarcerated person needs to be placed in isolated confinement for his own protection, in which case only as follows:

a. An incarcerated person may be placed in isolated confinement with informed, voluntary consent

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59 *when there is reasonable cause to believe that such confinement is necessary to prevent reasonably*  
60 *foreseeable harm to the incarcerated person, provided that:*

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

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

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

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

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

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

81 *f. All voluntary and involuntary placements in isolated confinement under this subdivision 4 shall be*  
82 *reviewed every 48 hours and the reason why a less-restrictive setting could not be utilized shall be*  
83 *recorded in writing by the facility administrator and placed in the incarcerated person's institutional*  
84 *file.*

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

94 *D. Nothing in this section shall be construed to prevent the placement of incarcerated persons in*  
95 *protective custody settings that do not constitute isolated confinement.*

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

100 *F. The Director shall develop policies and procedures, and submit proposed regulations, to effectuate*  
101 *the provisions of this section.*