

2021 -- S 0395

=====
LC001661
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2021

—————
A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT -- RESTRICTIVE HOUSING ACT

Introduced By: Senators Mack, Acosta, Mendes, Anderson, Calkin, Bell, Murray, Euer,
Burke, and Cano

Date Introduced: February 25, 2021

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 42 of the General Laws entitled "STATE AFFAIRS AND
2 GOVERNMENT" is hereby amended by adding thereto the following chapter:

3 CHAPTER 160

4 RESTRICTIVE HOUSING ACT

5 **42-160-1. Legislative intent.**

6 (a) It is the policy of the state of Rhode Island that the department of corrections and the
7 facilities it operates, maintain safe, secure housing for all inmates.

8 (b) Restrictive housing should only be used:

9 (1) In circumstances that pose a clear and direct threat to the safety of persons or to the safe
10 and secure operations of the facility;

11 (2) In the absence of alternatives to restrictive housing;

12 (3) For the shortest time possible; and

13 (4) With the least restrictive conditions possible.

14 **42-160-2. Definitions.**

15 As used in this chapter, unless the context indicates a different meaning or intent:

16 (1) "Administrative confinement" means any status or classification, except for disciplinary
17 confinement, for prisoners whose conduct may pose a serious threat to life, self, staff, other
18 prisoners, or the facility's security or orderly operation.

19 (2) "Department" means the department of corrections.

1 (3) "Director" means the director of the department of corrections.

2 (4) "Disciplinary confinement" means punitive confinement of a prisoner based on
3 violation of departmental rules, whether in general population, a specialized housing unit, or
4 elsewhere.

5 (5) "General population" means classification to maximum, medium, or minimum security,
6 with no restrictions placed on activities.

7 (6) "Member of a vulnerable population" means someone who:

8 (i) Is twenty-two (22) years of age or younger;

9 (ii) Is fifty-five (55) years of age or older;

10 (iii) Has a serious and persistent mental illness, as defined by the department of corrections,
11 or a mental disability, as defined in § 40.1-5-2;

12 (iv) Has a developmental disability, as defined in § 40.1-26-2;

13 (v) Is pregnant, in the postpartum period, or has recently suffered a miscarriage or
14 terminated a pregnancy; or

15 (vi) Has a significant auditory or visual impairment, or a serious medical condition that
16 cannot be adequately treated in restrictive housing.

17 (7) "Protective custody" means any form of separation from a prison's general population
18 for prisoners requiring additional protection for their own safety.

19 (8) "Restrictive housing" means any type of detention that involves removal of a prisoner
20 from general population, voluntarily or involuntarily; placement in a locked room or cell, whether
21 alone or with another prisoner; and the inability to leave the room or cell for the vast majority of
22 the day, typically eighteen (18) hours or more, to include all forms of disciplinary confinement and
23 administrative confinement.

24 (9) "Step-down plan" means an individualized program, developed by a coordinated,
25 multidisciplinary team to include mental health, case management, and security practitioners, that
26 addresses:

27 (i) The specific behaviors that resulted in placement in restrictive housing;

28 (ii) The programs and services available to the prisoner to address that behavior and
29 promote general rehabilitation;

30 (iii) An estimated timeframe for returning to a less-restrictive classification;

31 (iv) Incentives available so that prisoners can earn additional privileges and an accelerated
32 return to the general population; and

33 (v) A schedule for regular review of the plan and the prisoner's classification.

34 **42-160-3. Restrictive housing, generally.**

1 (a) Each prisoner entering restrictive housing must be seen and assessed by a qualified
2 mental health professional or health care professional within seventy-two (72) hours of placement
3 and at least every fourteen (14) days thereafter.

4 (b) For each placement in restrictive housing, the department shall document:

5 (1) The nature of the threat to safety and security posed by the prisoner;

6 (2) The impact any restrictions in conditions of confinement may have on their health; and

7 (3) All alternatives that may be available to safely deal with the threat, other than restrictive
8 housing.

9 (c) Living conditions in restrictive housing must approximate those in general population,
10 including equal access to programming and services, contact with family, access to the library and
11 reading materials, personal belongings in-cell, and medical and mental health care, with no major
12 differences except for reasons of danger to life, health, or safety.

13 (d) Prisoners in restrictive housing shall receive a daily visit from the senior correctional
14 supervisor in charge of the unit, daily visits from a qualified health care professional, and visits
15 from members of the program staff at least weekly.

16 **42-160-4. Discipline; disciplinary confinement.**

17 (a) The department shall establish maximum penalties for each level of offense. These
18 penalties should always include alternatives to disciplinary confinement.

19 (b) All penalties shall be proportionate to the offense.

20 (c) Disciplinary confinement shall only be considered for offenses involving violence,
21 involving escape, or posing a threat to institutional safety by encouraging others to engage in such
22 misconduct.

23 (d) All prisoners in disciplinary confinement shall receive a minimum of two (2) hours out-
24 of-cell each day.

25 (e) No prisoner shall serve more than fifteen (15) days at a time in disciplinary confinement,
26 for any single rule violation or any series of related rule violations. Any policy implementing this
27 provision will require a break of at least fifteen (15) days between disciplinary detention sanctions.

28 (f) No member of a vulnerable population shall be placed in disciplinary confinement for
29 any period of time unless the individual presents an immediate and present danger and there is no
30 reasonable alternative for placement. Such placement shall last only as long as necessary to find an
31 alternative housing placement.

32 (g) A prisoner should not be placed in restrictive housing pending investigation of a
33 disciplinary offense unless their presence in general population would pose a danger to themselves,
34 staff, other prisoners, or the public. A prisoner's placement in restrictive housing pending

1 investigation shall be reviewed within twenty-four (24) hours by the warden or his/her designee.
2 No prisoner shall remain in investigative segregation for a longer period of time than the maximum
3 term of disciplinary segregation permitted for the most serious offense charged.

4 **42-160-5. Transitional disciplinary confinement.**

5 (a) If, after completing a fifteen (15) day term of disciplinary confinement, a prisoner's
6 immediate return to general population would pose an imminent threat to the security of the
7 institution, the director or designee may place such prisoner in transitional disciplinary confinement
8 for the limited purpose of addressing the root cause of the threat posed.

9 (b) All prisoners in transitional disciplinary confinement shall be offered programming
10 tailored to the nature of the threat that would be posed by their immediate return to general
11 population. No prisoner shall be placed in transitional disciplinary confinement unless such
12 programming is made available to him or her.

13 (c) Upon release from transitional disciplinary confinement, prisoners may continue and
14 complete any programming that they began in transitional disciplinary confinement.

15 (d) No prisoner shall spend more than thirty (30) days at a time in transitional disciplinary
16 confinement.

17 (e) All prisoners in transitional disciplinary confinement must receive a minimum of two
18 (2) hours recreation each day. Programming time shall not count towards the two (2) hour minimum
19 recreation time.

20 **42-160-6. Administrative confinement, protective custody.**

21 (a) Placement in administrative confinement is limited to individuals who pose an
22 imminent threat to the security of the institution, shall only be considered when it serves a specific
23 penological purpose, and must last no longer than necessary to address the specific reason(s) for
24 placement.

25 (b) All prisoners in administrative confinement shall receive a minimum of four (4) hours
26 out-of-cell each day.

27 (c) Each prisoner in administrative confinement must have their status reviewed by the
28 classification board, warden, or warden's designee every seven (7) days for the first sixty (60) days
29 of the prisoner's placement and at least every thirty (30) days after the first sixty (60) days.

30 (d) The department shall create an individualized step-down plan, as defined in § 42-160-
31 2, no later than fourteen (14) days after each placement in administrative confinement. This step-
32 down plan shall be shared with the prisoner unless specifically articulable security concerns require
33 otherwise.

34 (e) Where possible, prisoners with serious mental illness should be diverted from

1 administrative confinement and placed in a clinically appropriate alternative form of housing. Any
2 prisoner with a serious mental illness placed in administrative confinement must receive intensive,
3 clinically appropriate mental health treatment for the entirety of the placement in administrative
4 confinement.

5 (f) No prisoner classified to protective status may be held in conditions more restrictive
6 than those in administrative confinement.

7 **42-160-7. Transitional administrative confinement and step-down housing.**

8 (a) The department shall create a system of step-down and transitional housing and
9 programming for prisoners who require additional assistance in transitioning from administrative
10 confinement into general population.

11 (b) Conditions in transitional step-down and transitional housing shall mirror, to the extent
12 possible, those in general population.

13 (c) At a minimum, prisoners in step-down and transitional housing shall receive six (6)
14 hours of out-of-cell time each day.

15 **42-160-8. Reporting.**

16 The department of corrections shall issue a report to be made publicly available on the
17 department's website one year after the passage of this section and by January 31 of each year
18 thereafter, indicating the following, broken out by disciplinary, administrative, and transitional
19 confinement:

20 (1) The number of prisoners in each institution placed in restrictive housing during the past
21 year;

22 (2) The nature of the infractions and behaviors leading to the use of restrictive housing;

23 (3) The lengths of terms served in restrictive housing, including terms served consecutively
24 and cumulatively;

25 (4) The race, ethnicity, gender, and religion of all prisoners placed in restrictive housing;

26 (5) The number of defined members of a vulnerable population, placed in restrictive
27 housing, by category listed in § 42-160-2.

28 SECTION 2. This act shall take effect upon passage.

=====
LC001661
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT -- RESTRICTIVE HOUSING ACT

1 This act would create the restrictive housing act providing procedures for removing
2 prisoners from general population and into restrictive housing.

3 This act would take effect upon passage.

=====
LC001661
=====