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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2023

A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT -- SOLITARY CONFINEMENT
REFORM ACT

Introduced By: Representatives Felix, Cruz, Craven, Batista, Vella-Wilkinson, Caldwell,
Ajello, Kazarian, and Morales

Date Introduced: March 17, 2023

Referred To: House 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 56.4

4 SOLITARY CONFINEMENT REFORM ACT

5 **42-56.4-1. 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 **42-56.4-1. 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.

1 (2) "Basic necessities" includes weather-appropriate clothing and footwear; adequate food
2 in compliance with medical and religious accommodations, with no more than twelve (12) hours
3 between meals; access to drinking water and functioning sanitary fixtures; access to a shower and
4 hygienic items; bedding; and ventilation.

5 (3) "Cell" means any room, area or space that is primarily used for the confinement of
6 prisoners; or any room, area or space that is less than one hundred square feet (100 sq. ft), regardless
7 of use or purpose. Shared spaces whose primary purpose is congregate social interaction, education,
8 programming, rehabilitation, or physical and psychological wellness, including recreation areas,
9 classrooms, libraries, and spaces used for medical evaluation and treatment, shall not constitute
10 "cells."

11 (4) "Department" means the department of corrections.

12 (5) "Director" means the director of the department of corrections.

13 (6) "Disciplinary confinement" means punitive confinement of a prisoner based on
14 violation of departmental rules, whether in the general population, a specialized housing unit, or
15 elsewhere.

16 (7) "General population" means classification to maximum, medium, or minimum security
17 with no restrictions placed on activities or privileges.

18 (8) "Member of a vulnerable population" means someone who:

19 (i) Has a serious and persistent mental illness, as defined by the department of corrections,
20 or a psychiatric disability, as defined in § 40.1-5-2;

21 (ii) Has a developmental disability, as defined in § 40.1-1-8.1;

22 (iii) Is pregnant, in the postpartum period, or has recently suffered a miscarriage or
23 terminated a pregnancy; or

24 (iv) Has a significant auditory or visual impairment, or a serious medical condition that
25 cannot be adequately treated in restrictive housing or which is medically contraindicated to
26 placement in restrictive housing.

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

29 (10) "Restrictive housing" means any type of detention where a prisoner is unable to leave
30 their room or cell for eighteen (18) hours or more in a twenty-four (24) hour period, including all
31 forms of disciplinary confinement and administrative confinement, loss of all privileges,
32 administrative restrictive status, or other classifications or statuses that restrict out-of-cell time to
33 six (6) or fewer hours per day.

34 (11) "Step-down plan" means an individualized program, developed by a coordinated,

1 multidisciplinary team to include mental health, case management, and security practitioners, that
2 describes:

- 3 (i) The specific behaviors that resulted in placement in restrictive housing;
- 4 (ii) The programs and services available to the prisoner to address that behavior and
5 promote general rehabilitation;
- 6 (iii) An estimated timeframe for returning to a less-restrictive classification;
- 7 (iv) Incentives available in order that prisoners can earn additional privileges and an
8 accelerated return to the general population; and
- 9 (v) A schedule for regular review of the plan and the prisoner's classification.

10 (12) "Out-of-cell" means being in a space outside of the "cell" as defined in § 42-56.4-2.

11 **42-56.4-3. Restrictive housing, generally.**

12 (a) The department shall maximize the amount of time that each prisoner in restrictive
13 housing spends outside of the cell by providing, as appropriate, access to recreation, education,
14 clinically appropriate treatment therapies, skill-building activities, and social interaction with staff
15 and other inmates.

16 (b) Each prisoner entering restrictive housing shall be seen and assessed by a qualified
17 mental health professional or health care professional within seventy-two (72) hours of placement
18 and at least every fourteen (14) days thereafter.

19 (c) For each placement in restrictive housing, the department shall document:

- 20 (1) The nature of the threat to safety and security posed by the prisoner;
- 21 (2) The impact any restrictions in conditions of confinement may have on their health; and
- 22 (3) All alternatives that may be available to safely deal with the threat, other than restrictive
23 housing.

24 (d) Prisoners in restrictive housing shall have equal access to programming; personal
25 belongings in-cell, including food, legal and reading materials; commissary; medical and mental
26 health care; legal assistance, including law library and notary services; and basic necessities as
27 those in the general population. If provision of any such services or belongings to an individual
28 would create a significant and unreasonable risk to the safety and security of incarcerated persons,
29 staff, or the facility, such services or belongings may be withheld, on an individual basis, until it
30 reasonably appears that the risk has ended.

31 (e) Each decision to withhold services or entitlements under subsection (d) of this section
32 shall be meaningfully reviewed within twenty-four (24) hours, and every seven (7) days thereafter,
33 by the facility warden, or designee, and by a qualified mental health professional. Each review shall
34 consider the impact of continued deprivation of services or entitlements on the person's risk to

1 safety and security, and the warden shall articulate in writing, with a copy provided to the
2 incarcerated person, the specific reason why the person currently poses an unreasonable risk to
3 safety and security and why the particular services or entitlements shall continue to be withheld.
4 Written approval from the director shall be required for any deprivation of services or entitlements
5 beyond thirty (30) days and every thirty (30) days thereafter.

6 (f) No prisoner shall be denied access to programming or work assignments solely on the
7 basis of being in restrictive housing, and the department shall offer programming to prisoners in
8 restrictive housing that is substantially similar to programming offered to prisoners in the general
9 population, including accommodating classwork and education in-cell. Additionally, the
10 department shall offer prisoners in restrictive housing additional out-of-cell, trauma-informed
11 therapeutic programming aimed at promoting personal development, addressing underlying causes
12 of problematic behavior resulting in placement in restrictive housing, and helping prepare for
13 discharge from restrictive housing to the general population and to the community.

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

17 (h) Prisoners shall have a meaningful opportunity to be heard before a decision is made to
18 place them in restrictive housing, at each classification review in administrative confinement
19 beyond sixty (60) days, and at each decision to withhold entitlements under subsection (e) of this
20 section beyond thirty (30) days. Such a hearing or proceeding shall be considered a contested case,
21 as defined in § 42-35-1.

22 **42-56.4-4. Discipline -- Disciplinary confinement.**

23 (a) The department shall establish maximum penalties for each level of offense. These
24 penalties should always include alternatives to disciplinary confinement. The maximum restrictive
25 housing penalty for any single rule violation or any series of related rule violations shall be no more
26 than fifteen (15) days.

27 (b) All penalties shall be proportioned to the offense.

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

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

33 (e) No prisoner shall serve more than thirty (30) days in disciplinary confinement in a sixty
34 (60) day period.

1 (f) Prisoners who assert that they have been held in disciplinary confinement beyond the
2 time limits specified in this section shall have a meaningful opportunity to be heard before the
3 warden or the warden's designee. Such a hearing or proceeding shall be considered a contested
4 case.

5 (g) No prisoner who is below age twenty-two (22), over age sixty (60), or a member of a
6 vulnerable population shall be placed in disciplinary confinement for any period of time unless the
7 individual presents an immediate and present danger and there is no reasonable alternative for
8 placement. Such placement shall last only as long as necessary to find an alternative housing
9 placement.

10 (h) A prisoner should not be placed in restrictive housing pending investigation of a
11 disciplinary offense unless their presence in the general population would pose a danger to
12 themselves, staff, other prisoners, or the public. A prisoner's placement in restrictive housing
13 pending investigation shall be reviewed within twenty-four (24) hours by the warden, or designee.
14 No prisoner shall remain in investigative segregation for a longer period of time than the maximum
15 term of disciplinary segregation permitted for the most serious offense charged.

16 **42-56.4-5. Administrative confinement -- Protective custody.**

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

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

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

26 (d) The department shall create an individualized step-down plan, as defined in § 42- 56.4-
27 2, no later than fourteen (14) days after each placement in administrative confinement. This step-
28 down plan shall be shared with the prisoner unless specifically articulable security concerns require
29 otherwise.

30 (e) Where possible, prisoners with serious mental illness should be diverted from
31 administrative confinement and placed in a clinically appropriate alternative form of housing. Any
32 prisoner with a serious mental illness placed in administrative confinement shall receive intensive,
33 clinically appropriate mental health treatment for the entirety of the placement in administrative
34 confinement.

1 (f) No prisoner classified to protective status shall be held in conditions more restrictive
2 than those in administrative confinement.

3 **42-56.4-6. Transitional administrative confinement and step-down housing.**

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

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

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

11 **42-56.4-7. Staff training.**

12 (a) The department shall provide training to employees of the department who interact with
13 inmates concerning the following:

14 (1) Dispute resolution methods and de-escalation and communication techniques;

15 (2) Trauma-informed care and restorative justice;

16 (3) The types and symptoms of mental illness;

17 (4) Custodial needs of prisoners with mental illness; and

18 (5) The long- and short-term psychological effects of being on administrative segregation
19 status.

20 (b) Within available appropriations, the department of corrections shall take measures to
21 promote the wellness of employees of the department who interact with inmates. These measures
22 may include, but need not be limited to:

23 (1) Employee assistance programs;

24 (2) Peer support programs; and

25 (3) Stress management training.

26 **42-56.4-8. Reporting.**

27 (a) The department of corrections shall issue a report ("annual restrictive housing report")
28 to be made publicly available on the department's website one year after the effective date of this
29 chapter and by January 31 of each year thereafter, indicating the following, broken out by
30 disciplinary, administrative, and transitional confinement:

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

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

34 (3) The lengths of terms served in restrictive housing, including terms served consecutively

1 and cumulatively;

2 (4) The races, ethnicities, genders, and religions of all prisoners placed in restrictive
3 housing;

4 (5) The number of members of a vulnerable population placed in restrictive housing, by
5 category promulgated in the definition thereof listed in § 42-56.4-2; and

6 (6) The average weekly out-of-cell time provided to prisoners in each category of
7 restrictive housing.

8 (b) The restrictive housing oversight committee, as created in § 42-26-20, may require the
9 department to publish additional information, in addition to the fields delineated by statute, in the
10 annual restrictive housing report.

11 **42-56.4-9. Declaratory judgment.**

12 (a) Any prisoner may bring an action for declaratory judgment in the superior court of
13 Providence county, when it is alleged that:

14 (1) The department of corrections or an officer thereof failed to perform a duty enjoined
15 upon it by this chapter, or acted in violation of lawful procedure as required by this chapter; or

16 (2) A department rule, or its threatened application, interferes with or impairs, or threatens
17 to interfere with or impair, the legal rights or privileges of the plaintiff under this chapter or the
18 state or federal Constitution.

19 (b) A declaratory judgment may be rendered whether or not the plaintiff has requested the
20 agency to pass upon the validity or applicability of the rule in question.

21 SECTION 2. Chapter 42-26 of the General Laws entitled "Public Safety Grant
22 Administration Office" is hereby amended by adding thereto the following section:

23 **42-26-20. Restrictive housing oversight committee.**

24 (a) There is hereby created within the public safety grant administration office, pursuant to
25 the provisions of § 42-26-7, the restrictive housing oversight committee ("committee") for the
26 purpose of monitoring the use of restrictive housing at the department of corrections.

27 (b) The committee shall consist of the following five (5) members who shall assemble
28 annually or more often at the call of the chairperson or upon petition of a majority of its members:

29 (1) One who has been previously sentenced to spend time in restrictive confinement,
30 appointed by the Black, Latino, Indigenous, Asian-American and Pacific Islander Caucus of the
31 general assembly;

32 (2) One who has expertise in law and a demonstrated interest in advancing the rights and
33 welfare of incarcerated persons, appointed by the speaker of the house of representatives;

34 (3) One who has expertise in the provision of mental health care to incarcerated persons or

1 formerly incarcerated persons, appointed by the president of the senate;
2 (4) One who has a demonstrated interest in advancing the rights and welfare of incarcerated
3 persons appointed by the governor; and
4 (5) The director of the department of corrections, or designee.
5 (c) A chair of the committee shall be selected by the members of the committee.
6 (d) Of the members first appointed to the committee, two (2) members shall serve a term
7 of two (2) years, two (2) members shall serve a term of one year, and thereafter, members shall
8 serve a term of two (2) years. Members shall continue to serve until their successor is duly
9 appointed and qualified. Any vacancy on the oversight committee shall be filled in the same manner
10 as the original appointment.
11 (e) The committee shall perform the following functions:
12 (1) Appoint a restrictive housing ombudsperson ("ombudsperson") based on whatever
13 procedure is determined by the committee;
14 (2) Review and supervise the actions of the ombudsperson;
15 (3) Meet not less than quarterly to bring matters to the ombudsperson's attention and to
16 consult on their services, findings and recommendations; and
17 (4) Convene semiannual public hearings to discuss the ombudsperson's services, findings
18 and recommendations.
19 (f) The ombudsperson shall be empowered to:
20 (1) Receive and investigate complaints related to incarcerated persons' health, safety,
21 welfare, and rights;
22 (2) Identify issues within the department of corrections related to restrictive housing;
23 (3) Ensure compliance with relevant statutes, rules and policies pertaining to restrictive
24 housing;
25 (4) Provide information to inmates, probationers and parolees, and their families related to
26 restrictive housing; and
27 (5) Promote public awareness and understanding of the rights and responsibilities of
28 individuals in prison and conditions related to restrictive housing.
29 (g) The ombudsperson shall conduct random biannual inspections of restrictive housing
30 areas in each facility, including cells, recreation areas, and programming spaces, and shall visit
31 different facilities on each inspection. Neither the committee nor the ombudsperson shall announce
32 an inspection to any individual or entity outside of the committee before the inspection occurs. The
33 department shall ensure full access to the facility, inmates and staff as part of these inspections
34 consistent with this section.

1 (h) All oral and written communications, and records relating to such communications
2 between a person in the custody of the department of corrections and the ombudsperson or
3 committee, including, but not limited to, the identity of a complainant, the details of the
4 communications and the ombudsperson's findings shall be confidential and shall not be disclosed
5 without the consent of such person, except that the committee or ombudsperson may disclose
6 without the consent of such person general findings or policy recommendations based on such
7 communications; provided no individually identifiable information is disclosed.

8 (i) Notwithstanding any provision of the general laws concerning the confidentiality of
9 records and information, the ombudsperson shall have access to, including the right to inspect and
10 copy, any non-privileged records necessary to carry out their responsibilities.

11 (j) In the performance of the responsibilities provided for in this section, the ombudsperson
12 may communicate privately with any person in the custody of the department of corrections. Such
13 communications shall be confidential except as provided in this section.

14 (k) Members of the committee and ombudsperson shall meet with the governor and the
15 director of the department of corrections at least two (2) times each year to report on the work and
16 findings of the committee.

17 (l) A majority of the members appointed to the committee shall constitute a quorum, which
18 shall be necessary for the committee to conduct business. A majority vote of the members present
19 shall be required for action of the committee.

20 (m) The general assembly shall annually appropriate such sums as it may deem necessary
21 for the payment of any ombudsperson's salary and for the payment of office expenses and other
22 actual expenses incurred by the committee or any ombudsperson's in the performance of their
23 duties; and the state controller is hereby authorized and directed to draw their orders upon the
24 general treasurer for the payment of such sum or sums, or so much thereof, as may from time to
25 time be required, upon receipt by them of proper vouchers approved by any ombudsperson's or
26 committee.

27 SECTION 3. Section 42-35-1 of the General Laws in Chapter 42-35 entitled
28 "Administrative Procedures" is hereby amended to read as follows:

29 **42-35-1. Definitions.**

30 As used in this chapter:

31 (1) Except as otherwise provided herein, "agency" means a state agency, authority, board,
32 bureau, commission, department, district, division, institution, office, officer, quasi-public agency,
33 or other political subdivisions created by the general assembly or the governor, other than the
34 legislature or the judiciary, that is authorized by law of this state to make rules or to determine

1 contested cases.

2 (2) “Agency action” means:

3 (i) The whole or part of an order or rule;

4 (ii) The failure to issue an order or rule; or

5 (iii) An agency’s performing, or failing to perform, a duty, function, or activity or to make
6 a determination required by law.

7 (3) “Agency head” means the individual in whom, or one or more members of the body of
8 individuals in which, the ultimate legal authority of an agency is vested.

9 (4) “Agency record” means the agency rulemaking record required by § 42-35-2.3.

10 (5) “Contested case” means a proceeding, including but not restricted to, ratemaking, price
11 fixing, and licensing, in which the legal rights, duties, or privileges of a specific party are required
12 by law to be determined by an agency after an opportunity for hearing.

13 (6) “Electronic” means relating to technology having electrical, digital, magnetic, wireless,
14 optical, electromagnetic, or similar capabilities.

15 (7) “Electronic record” means a record created, generated, sent, communicated, received,
16 or stored by electronic means.

17 (8) “Final rule” means a rule promulgated under §§ 42-35-2.6 through 42-35-2.9, an
18 emergency rule promulgated under § 42-35-2.10, or a direct, final rule promulgated under § 42-35-
19 2.11.

20 (9) “Guidance document” means a record of general applicability developed by an agency
21 which lacks the force of law but states the agency’s current approach to, or interpretation of, law
22 or describes how and when the agency will exercise discretionary functions. The term does not
23 include records described in subdivisions (19)(i), (ii), (iii), or (iv).

24 (10) “Index” means a searchable list in a record of subjects and titles with page numbers,
25 hyperlinks, or other connectors that link each index entry to the text to which it refers.

26 (11) “License” includes the whole or part of any agency permit, certificate, approval,
27 registration, charter, or similar form of permission required by law, but it does not include a license
28 required solely for revenue purposes.

29 (12) “Licensing” includes the agency process respecting the grant, denial, renewal,
30 revocation, suspension, annulment, withdrawal, or amendment of a license.

31 (13) “Order” means the whole or a part of a final disposition, whether affirmative, negative,
32 injunctive, or declaratory in form, of a contested case.

33 (14) “Party” means each person or agency named or admitted as a party, or properly
34 seeking and entitled as of right to be admitted as a party.

1 (15) "Person" means any individual, partnership, corporation, association, the department
2 of environmental management, governmental subdivision, or public or private organization of any
3 character other than an agency.

4 (16) "Promulgate," with respect to a rule, means the process of writing a new rule, or
5 amending or repealing an existing rule. "Promulgation" has a corresponding meaning. The process
6 of "promulgation" begins with the filing of the notice of proposed rulemaking under § 42-35-2.7
7 and ends upon the effective date of the rule. "Promulgate" also includes the completion of the
8 rulemaking process for emergency rules (§ 42-35-2.10) or direct final rules (§ 42-35-2.11), if
9 applicable.

10 (17) "Reasonable charge" means the lowest, customary charge for a service.

11 (18) "Record" means information that is inscribed on a tangible medium or that is stored
12 in an electronic or other medium and is retrievable in perceivable form.

13 (19) "Rule" means the whole or a part of an agency statement of general applicability that
14 implements, interprets, or prescribes law or policy or the organization, procedure, or practice
15 requirements of an agency and has the force of law. The term includes the amendment or repeal of
16 an existing rule. The term is used interchangeably in this chapter with the term "regulation." The
17 term does not include:

18 (i) A statement that concerns only the internal management of an agency and which does
19 not affect private rights or procedures available to the public. Individuals under the custody or
20 supervision of the department of corrections shall be considered members of the public for the
21 purposes of this chapter, except where disclosure of any rule or portion of a rule would endanger
22 the public welfare and security, pursuant to § 38-2-2(4)(F);

23 (ii) An intergovernmental or interagency memorandum, directive, or communication that
24 does not affect private rights or procedures available to the public;

25 (iii) An opinion of the attorney general, or an opinion of the ethics commission pursuant to
26 § 36-14-11;

27 (iv) A statement that establishes criteria or guidelines to be used by the staff of an agency
28 in performing audits, investigations, or inspections, settling commercial disputes, negotiating
29 commercial arrangements, or defending, prosecuting, or settling cases, if disclosure of the criteria
30 or guidelines would enable persons violating the law to avoid detection, facilitate disregard of
31 requirements imposed by law, or give an improper advantage to persons that are in an adverse
32 position to the state;

33 (v) A form developed by an agency to implement or interpret agency law or policy; or

34 (vi) A guidance document.

1 (20) "Sign" means, with present intent, to authenticate a record:

2 (i) To execute a tangible symbol; or

3 (ii) To attach to or logically associate with the record an electronic symbol, sound, or
4 process.

5 (21) "Small business" shall have the same meanings that are provided for under 13 C.F.R.,
6 Pt. 121, as may be amended from time to time.

7 (22) "Small business advocate" means the person appointed by the chief executive officer
8 of the commerce corporation as provided in § 42-64-34.

9 (23) "State register" means the publication required under chapter 8.2 of title 42.

10 (24) "Website" means a website on the internet or other similar technology or successor
11 technology that permits the public to search a database that archives materials required to be
12 published or exhibited by the secretary of state or an agency under this chapter.

13 (25) "Writing" means a record inscribed on a tangible medium. "Written" has a
14 corresponding meaning.

15 SECTION 4. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT -- SOLITARY CONFINEMENT
REFORM ACT

1 This act would establish the restrictive housing oversight committee ("committee") for the
2 purpose of monitoring the use of restrictive housing ("solitary confinement"), as well as disciplinary
3 and administrative confinement at the department of corrections. This act would also authorize the
4 committee to hire an ombudsperson to assist it in its oversight duties.

5 This act would take effect upon passage.

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