

HOUSE BILL NO. 2487

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Public Safety

on \_\_\_\_\_)

(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.

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

32 1. When an incarcerated person makes a request to be placed in restorative housing for his own  
33 protection, the facility shall bear the burden of establishing a basis for refusing the request;

34 2. An incarcerated person who is in restorative housing for his own protection based on his request  
35 or with his informed, voluntary consent may opt out of restorative housing by voluntarily removing his  
36 consent to remain in restorative housing by providing informed voluntary refusal;

37 3. An incarcerated person placed in restorative housing for his own protection shall receive similar  
38 opportunities for activities, movement, and social interaction, taking into account his safety and the safety  
39 of others, as are provided to incarcerated persons in the general population of the facility;

40 4. An incarcerated person who has been placed in restorative housing for his own protection and  
41 is subject to removal from such confinement, not by his own request, shall be provided with a timely and  
42 meaningful opportunity to contest the removal;

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

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

52 C. If an incarcerated person is placed in restorative housing pursuant to subsection B, (i) such  
53 placement shall be reviewed once a week and the reason why a less restrictive setting could not be utilized

54 shall be recorded in writing by the facility administrator and placed in the incarcerated person's  
55 institutional file; (ii) the facility administrator shall document an action plan for transitioning the  
56 incarcerated person out of restorative housing as soon as safely possible; and (iii) the facility administrator  
57 shall document the date and duration of such placement, as well as the statutory basis under this section  
58 for such placement, and include all such documentation in the incarcerated person's institutional file.

59 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 administrator  
61 determines a lockdown is required to ensure the safety of the incarcerated persons in the facility, provided  
62 that the facility administrator documents in writing (i) the housing units subject to the lockdown, (ii) the  
63 specific reasons why any lockdown lasting for more than 24 hours is necessary, and (iii) why less  
64 restrictive interventions are insufficient to accomplish the facility's safety goals. Such documentation shall  
65 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  
67 housing, 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  
70 the 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  
75 effectuate the provisions of this section.

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