

PURPOSE

To amend Section 353-41, to align practices for the use, implementation and monitoring of the most difficult population within the jail and prison settings through various types of restrictive housing and will keep staff and offenders safe and free from harm, predatory behavior and victimization within the correctional institutions.

- **Page 1 Line 16** The word “self” was added to cover suicidality and safety watch inmates considered for placement in what the bill defines as restricted housing.
- **Page 5 Lines 5-7** [provided that the correctional facility shall bear the burden of establishing the foregoing by clear and convincing evidence] deleted. Correctional facilities operate under preponderance of evidence which is suitable and best practice in a correctional setting.
- **Page 5 Line 13** [the right to] deleted. The language is too stringent in setting a standard of legality. Parts of the requirements are not always necessary. Being represented is determined through due process and only allowed at request of the inmate and if necessary.
- **Page 5 Line 14** deleted the word [hearing] and replaced with “review.” It would be impossible to have a hearing in 24 hours considering due process; the time to complete an investigation, processing documentation, setting hearing date, providing 24-hour notice and convening the hearing and processing the results for service to the inmate.
- **Page 5 Line 18** [Appear at the hearing;] deleted since proposed changes will not require a hearing in 24 hours.
- **Page 5 Line 19** [Be represented at the hearing;] deleted. Representation is only granted if requested by the inmate and it is found to be necessary for reasons the inmate is not able to represent themself.
- **Page 6 Line 2** [at the hearing;] deleted.
- **Page 6 Line 5** “unless medically indicated;” Health Care Administrator added language for clarification.
- **Page 6 Line 9** “unless medically determined by a clinician;” Health Care Administrator added language for clarification.
- **Page 6 Lines 10-13** [A disciplinary sanction of restrictive housing imposed on a committed person who is subsequently removed from restrictive housing pursuant to this subsection shall be deemed completed;] deleted due to many instances

requiring status changes if and when placed into restrictive housing. This would include being on disciplinary restriction then requires protective custody, pre-hearing to post hearing, disciplinary to administrative segregation, pre-hearing to suicide watch and back to restrictive housing etc.

- **Page 6 Lines 14-17** [During a facility-wide lockdown, a committed person shall not be placed in restrictive housing for more than thirty consecutive days, or for more than forty-five days total during any sixty-day period;] deleted. Language does not clearly indicate intent. It appears there is no nexus between facility wide lockdown and restrictive housing.
- **Page 7 Lines 1** “strive to” added language that is less directatory. It should not codify operational procedures. Many facilities do not have appropriate units to carry out the requirement.
- **Page 8 Line 2** [reduce the committed person’s violations,] deleted since misconduct is processed according to actual exhibited behavior.
- **Page 8 Line 5** “Facilities will attempt to ensure” added, [shall] deleted and “will” add.
- **Page 8 Lines 6-8** [during the final one hundred eighty days of the committed person’s term of incarceration,] deleted. Identifying a time frame is irrelevant It does not account for jail bonding, bail or court ordered release. The language in Lines 8-12 already treat the process according to the safety of the individual, other inmates, staff or the public.
- **Page 9 Line 3** [or related conduct] deletion. Language is ambiguous.
- **Page 9 Line 4** “unless medically determined” added language to clarify if self-harm leads to suicidality, allows for a medical determination of placement.
- **Page 9 Lines 9-10** added “facility Warden as ordered by the clinician” and deleted [Director or Deputy Director] to clarify geographically placement.
- **Page 9 Line 11** added “by the courts” since they are the branch of government who has authority to civilly commit a person.
- **Page 9 Lines 19-20** [the director, or deputy director,] deleted and added “facility Warden as ordered by the clinician” since a medical person should have delegated authority for the placement into a medical type setting, i.e., infirmary.
- **Page 10 Lines 6-20** [The warden or the warden’s designee determines that a facility-wide lockdown is necessary to ensure the safety of committed persons in the

facility, until the warden or the warden's designee determines that the threat to a committed person's safety no longer exists. The warden or the warden's designee shall document the specific reasons that any facility-wide lockdown was necessary for more than twenty-four hours, and the specific reasons why less restrictive interventions were insufficient to accomplish the facility's safety goals. Within twelve hours of a decision to extend a facility-wide lockdown beyond twenty-four hours, the director or deputy director of the department shall publish the foregoing reasons on the department's website and shall provide meaningful] deleted. Intent of language is confusing. Facility wide lockdowns are not limited to "ensuring safety". There are other reasons such as weather/natural disasters, physical plant issues, construction, and mass movements. This should not be public information.

- **Page 11 Lines 1-2** [notice to the legislature of the reasons for lockdown;] deleted.
- **Page 11 Line 3** added "or the clinician" delegates authority to medically clear and place into restrictive housing.
- **Page 11 Lines 4-5** [emergency confinement] deleted and added "restrictive housing"
- **Page 11 Lines 6-7** deleted [A committed person shall not be held in emergency confinement for more that forty-eight hours; and]
- **Page 11 Lines 8-9** deleted [emergency confinement] added "restrictive housing".
- **Page 11 Line 10** deleted [evaluation], added "screen".
- **Page 11 Line 13** deleted [twenty- four] added "seventy-two". Allows for reasonable application due to staffing and timing of restrictive housing placements.
- **Page 11 Lines 13-15** [Reports of these evaluations shall be immediately provided to the warden or the warden's designee;] deleted. The provision is unnecessary and will bring into question HIPPA violations.
- **Page 11 Line 16** deleted [physician] and added "clinician". Allows for a medical clinician to perform the required exam.
- **Page 11 Line 19 through Page 12 Line 2** [provided that any decisions to place or hold a committed person in medical isolation due to a mental health emergency shall be made by a clinician and based upon the clinician's personal examination of the committed person.] deleted due to redundancy.
- **Page 12 Lines 4-5** [at least every twelve hours and] deletion to allow as clinically indicated.

- **Page 12 Lines 8-9** deleted [designated] [Director or Deputy Director] for alignment of positions with appropriate authority.
- **Page 12 Line 9** added “mental health clinician” to align position with appropriate authority.
- **Page 12 Line 9** added “If a unit is not available at the facility, a committed person may be transferred to a facility with a higher level of care”. This allows more resources to provide for the highest level of care deemed necessary.
- **Page 12 Lines 15-16** added the word “information”. Deleted [informed, and written consent]. The responsibility for safety of an offender falls on the administration. Information requesting protective custody is enough for the administration to implement the process for placement.
- **Page 12 Line 19** deleted [makes a] added “provides” deleted [, informed,] added “information” changes to diction
- **Page 13 Line 6** delete [evidence] and replace with “information”. The use of the term evidence raises the legal level of information needed to make a determination for placement into protective custody.
- **Page 13 Lines 10-11** “The department will strive to provide a” added language that is less directory. Deleted [shall be provided] should not codify operational procedures. Many facilities do not have appropriate units to carry out the requirement.
- **Page 14 Line 2** added “request to”. An inmate may want to exit a protective custody (PC) status; however, it should not be mandated by the inmate through law. This allows the administration to assure the threat has been mitigated that initially placed the inmate in PC.
- **Page 14 Line 4** added “information stipulating the person’s request for refusal” language to clarify the administration manages protective custody for the safety of an inmate. Deleted [informed, and written refusal of that status,] the mandated language that allows the inmate to control placement. This allows the administration to assure the threat has been mitigated that initially placed the inmate in PC.
- **Page 14 Line 7** “fully review the information surrounding the reasons and use of the protective custody and, if possible, implement” adds language to fully assess and determine the use of possible least restrictive options rather than mandating them.

- **Page 14 Line 8** added “; less restrictive interventions may include” deleted [, including] language for diction.
- **Page 15 Lines 1-2** [in an emergency situation, or is] deleted as language is unnecessary
- **Page 15 Lines 13-16** [The committed person’s placement in restrictive housing shall not revert to another form of segregation after the initial sanction has been served;] deleted due to many instances requiring status changes if and when placed into restrictive housing. This would include but not limited to disciplinary restriction to protective custody, pre-hearing to post hearing, disciplinary to administrative segregation, pre-hearing to suicide watch and back to restrictive housing etc.
- **Page 16 Line 7** “if the review of the initial incident, and the threat to the safety of the inmate, staff, other inmates and the general facility would not be jeopardized,” added language for clarity.
- **Page 16 Line 8** “and the threat thereof has been mitigated.” added language for clarity.
- **Page 17 Lines 5-7** [shall be imposed only when necessary to ensure the safety of the committed person or other persons,] deleted language since restrictive housing may be utilized for purposes other than safety. It may rise to the level of restrictive housing after chronic misconduct of the same violation and after numerous attempts to apply less than restrictive housing alternatives fail.
- **Page 18 Lines 7-21 through Page 20 Lines 1-16** deleted, collecting statistics, creating reports for the oversight commission and posting to the internet is labor intensive. This will require specific staffing for this task. It was also stricken due to the inclusion of county police cell blocks that are not under state control.
- **Page 21 Line 4** “-two” add to twenty hours
- **Page 22 Lines 6-7** [is perceived to be lesbian, gay, bisexual, transgender, or intersex; and] deleted, perception is not factual. It would be an inappropriate guideline to set policy by. It should be noted; the use of restrictive housing is not based on anything other than behavior. The mentioned characteristics of a person is not a measure for a restrictive placement based on violent and/or inappropriate behavior.
- **Page 22 Lines 8-11** [By January 8, 2027, make recommendations to the legislature regarding more comprehensive laws, policies, and procedures regarding restrictive housing for members of vulnerable populations.] deleted, it should be noted, the

use of restrictive housing is not based on anything other than behavior. The mentioned characteristics are not a measure for the use of restrictive housing.

- **Page 23 Lines 12-14** [, and] [Any other individuals identified by the chairperson of the working group] deleted, DCR is concerned of too many people being added that may create difficulties in managing the process.