

HOUSE BILL NO. 763

INTRODUCED BY R. LYNCH

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4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO THE DEPARTMENT
5 OF CORRECTIONS; PROVIDING A STATE POLICY ON RESTRICTIVE HOUSING; CREATING
6 REQUIREMENTS FOR RESTRICTIVE HOUSING UNITS, INCLUDING ADMISSION AND RELEASE, PERIODIC
7 INMATE REVIEWS, HEALTH AND MENTAL HEALTH TREATMENT, STAFFING, AND OTHER CONDITIONS
8 OF CONFINEMENT FOR INMATES IN THE UNIT; CREATING REQUIREMENTS SPECIFIC TO YOUTH
9 FACILITIES; REQUIRING STEP-DOWN PROGRAMS; REQUIRING CERTAIN NOTIFICATIONS WHEN AN
10 INMATE IS RELEASED TO THE COMMUNITY DIRECTLY FROM A RESTRICTIVE HOUSING UNIT;
11 PROVIDING APPROPRIATIONS; AND PROVIDING AN EFFECTIVE DATE."

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13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
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15 NEW SECTION. **Section 1. Policy -- restrictive housing.** (1) It is the policy of the state of Montana
16 that the department of corrections and the facilities it operates or with which it contracts maintain safe, secure
17 housing for inmates who require separation from the general inmate population for detention or for safety and
18 security reasons.

- 19 (2) Restrictive housing should only be used:
20 (a) as a response to the most serious and threatening behavior;
21 (b) for the shortest time possible; and
22 (c) with the least restrictive conditions possible.

23
24 NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 13], the following definitions
25 apply:

- 26 (1) "Administrative segregation" means a nonpunitive housing status for inmates whose continued
27 presence in the general population may pose a serious threat to life, property, self, staff, other inmates, or the
28 facility's security or orderly operation.
29 (2) "Administrator" means the official, regardless of local title, who is ultimately responsible for the
30 operation and management of a division, facility, or program.

- 1 (3) "Department" means the department of corrections provided for in 2-15-2301.
- 2 (4) "Disability" means a physical or mental impairment that substantially limits one or more of a person's
3 major life activities, a person who has a record of such an impairment, or a person who is regarded as having
4 such an impairment.
- 5 (5) "Disciplinary detention" means a form of separation from the general population in which an inmate
6 who has committed a serious violation of conduct regulations is confined to an individual cell by a disciplinary
7 committee or other authorized group for short periods of time.
- 8 (6) "Facility" means a state prison defined in 53-30-101(2)(c)(i) through (2)(c)(iv) or a youth correctional
9 facility pursuant to 52-5-101.
- 10 (7) "Mental disorder" means exhibiting impaired emotional, cognitive, or behavioral functioning that
11 interferes seriously with an individual's ability to function adequately except with supportive treatment or services.
12 The individual also must:
- 13 (a) currently have or have had within the past year a diagnosed mental disorder; and
14 (b) currently exhibit significant signs and symptoms of a mental disorder.
- 15 (8) "Postpartum" means the first 6 weeks after delivery.
- 16 (9) "Prehearing confinement" means a short-term, nonpunitive housing status that is used to safely and
17 securely control high-risk or at-risk inmates.
- 18 (10) "Protective custody" means a form of separation from the general population for an inmate who
19 requests or requires protection from other inmates for reasons of health or safety.
- 20 (11) "Qualified mental health professional" includes psychiatrists, psychologists, psychiatric social
21 workers, licensed professional counselors, psychiatric nurses, or others who, by virtue of their education,
22 credentials, and experience, are permitted by law to evaluate and care for the mental health needs of patients.
- 23 (12) "Restrictive housing" means a placement that requires an inmate to be confined to a cell for at least
24 22 hours a day for the safe and secure operation of the facility. The term includes administrative segregation,
25 protective custody, and disciplinary detention.
- 26 (13) "Step-down program" means an individualized program that includes a system of review and
27 establishes criteria to prepare an inmate for transition to the general population or the community and that
28 involves a coordinated, multidisciplinary team approach that includes mental health, case management, and
29 security practitioners.
- 30 (14) "Temporary confinement" has the same meaning as "prehearing confinement" as defined in this

1 section.

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3 **NEW SECTION. Section 3. General requirements for restrictive housing -- procedures.** (1) An
4 inmate may be housed in administrative segregation during an investigation of alleged violations.

5 (2) An inmate may be placed in disciplinary detention only after a finding of a rule violation at an impartial
6 hearing and when there is not an adequate alternative disposition to regulate the inmate's behavior.

7 (3) An inmate's status in protective custody must be reviewed periodically by a classification committee
8 or other designated group.

9 (4) Medical personnel must be part of a multidisciplinary team when an inmate who has chronic care or
10 other significant medical accommodation needs participates in a step-down program.

11 (5) An inmate's placement in restrictive housing may not exceed 22 hours in a 24-hour period and is
12 limited to circumstances that pose a direct threat to the safety of persons or a clear threat to the safe and secure
13 operations of the facility. Placement may be made only after considering:

14 (a) the relationship between the threat the offender poses and the behaviors articulated in the schedule
15 established pursuant to subsection (9);

16 (b) the impact that restrictive housing may have on the medical and mental health conditions exhibited
17 by the inmate and possible alternatives that may be available to compensate for these conditions; and

18 (c) a description of alternatives to restrictive housing that may be available to safely address the threat
19 posed by the inmate.

20 (6) Female inmates determined to be pregnant or postpartum may not be housed in restrictive housing
21 unless exigent circumstances exist. If exigent circumstances exist, a female inmate who is pregnant or
22 postpartum may be placed in restrictive housing for a time not to exceed 24 hours. Any extension for exigent
23 circumstances must be approved by the administrator or the administrator's designee.

24 (7) A facility shall establish written operational procedures to govern restrictive housing and protective
25 custody units for the supervision of inmates under administrative segregation, disciplinary detention, prehearing
26 confinement, and protective custody. The operational procedures that govern restrictive housing and protective
27 custody must incorporate American correctional association standards that do not conflict with the provisions of
28 [sections 1 through 13].

29 (8) The administrator, a shift supervisor, or a designee of either the administrator or a shift supervisor
30 of an adult facility may order immediate segregation or placement in a restrictive housing unit when it is necessary

1 to protect the inmate or others. The action must be reviewed within 24 hours by the appropriate supervisor.

2 (9) An adult facility shall maintain a sanctioning schedule for facility rule violations.

3 (10) The administrator or the administrator's designee shall review the confinement of an adult inmate
4 that continues beyond 30 days. Continuous confinement of an adult inmate for more than 30 days requires the
5 approval of the administrator or the administrator's designee.

6

7 **NEW SECTION. Section 4. Admission -- status review.** (1) The procedures established by an adult
8 facility as required in [section 3(7)] must include:

9 (a) a documented process to admit an inmate to a restrictive housing unit. An inmate may be admitted
10 for protective custody only when there is documentation that this status is warranted and no reasonable
11 alternatives were available.

12 (b) a status review of an inmate in administrative segregation and protective custody every 7 days for
13 the first 60 days of the inmate's placement and at least every 30 days after the first 60 days. The reviews must
14 be conducted by a classification committee or other staff group.

15 (c) that, in nonemergent circumstances, an inmate may not be disciplined, placed on a behavior
16 management plan, classified, or reclassified to a restrictive housing unit based on the inmate's disability or mental
17 disorder or on behavior that is a product of the inmate's disability or mental disorder unless the placement is after
18 a prompt and appropriate evaluation by a qualified mental health professional;

19 (d) a documented review process to release an offender from administrative segregation or protective
20 custody;

21 (e) that an inmate may not be placed in prehearing confinement or in restrictive housing based solely
22 on the inmate's disability or mental disorder or on behavior that is a product of the inmate's disability or mental
23 disorder unless, after a prompt and appropriate evaluation by a qualified mental health professional, the qualified
24 mental health professional determines that the inmate presents such an immediate and serious danger that there
25 is no reasonable alternative. If the inmate is placed in prehearing confinement or in restrictive housing, the inmate
26 must be evaluated by a qualified mental health professional within 48 hours and regularly reevaluated every 14
27 days with the goal of securing appropriate treatment and reintegrating the inmate into the general population.

28 (f) that a hearing by a disciplinary committee or a hearings officer must be completed before an inmate
29 is placed in disciplinary detention for a rule violation; and

30 (g) that an inmate held in disciplinary detention for a period exceeding 60 days must be provided the

1 same program services and privileges as inmates in administrative segregation or protective custody. The
2 administrator or the administrator's designee shall review and approve the services and privileges to be allowed
3 under this subsection (1)(g).

4 (2) A new adult inmate placed directly into restrictive housing will receive written orientation materials
5 and, if required, translations in the inmate's own language. When a literacy problem exists, a staff member may
6 assist the inmate in understanding the material. Completion of orientation must be documented by a statement
7 signed and dated by the inmate.

8
9 **NEW SECTION. Section 5. Mental health status review.** (1) When a housing or management unit
10 exists for adult or youth inmates with mental health issues, a mental disorder, or mental illness, procedures
11 adopted pursuant to [section 3(7)] must provide for placements, assessments, specialized treatments, program
12 services, and scheduled case reviews by qualified mental health professionals in accordance with policies
13 established by the department.

14 (2) Upon notification that an inmate has been placed in restrictive housing, a qualified health care
15 professional will review the inmate's health record. If an existing medical, mental health, or dental need requires
16 accommodation, custody staff must be notified. When reviewing the health records of an inmate with a mental
17 disorder, health staff shall assess the risk of exacerbation of mental disorder and notify mental health staff. This
18 review and notification must be documented in the inmate's health record.

19 (3) The procedures established pursuant to [section 3(7)] must provide that an inmate entering restrictive
20 housing must be seen and assessed by a qualified mental health professional or health care professional, in
21 accordance with the national commission on correctional health care standards. Each contact must be
22 documented on the inmate's log, and the notation must contain, at a minimum, a status report and the date and
23 time of the contact. Individual logs must be filed in the inmate's medical and mental health records.

24 (4) A qualified mental health professional shall complete a mental health appraisal within 72 hours of an
25 inmate's placement in restrictive housing. The appraisal may include a mental health screening that has been
26 completed by health care personnel at the time the inmate is placed in restrictive housing. If confinement
27 continues beyond 30 days, a qualified mental health professional shall complete a behavioral health assessment
28 at least every 14 days for an inmate with a diagnosed behavioral or mental health disorder and more frequently
29 if clinically indicated. For an inmate without a behavioral health disorder, the assessment must be completed
30 every 14 days and more frequently if clinically indicated. The behavioral health assessment must be conducted

1 in a manner that ensures confidentiality.

2 (5) An inmate diagnosed with a serious mental disorder may not be placed in restrictive housing for more
3 than 14 days unless a multidisciplinary service team determines there is an immediate and present danger to
4 others or to the safety of the institution. If an inmate with a serious mental disorder is placed in restrictive housing,
5 the inmate must be provided with an active individualized treatment plan that includes weekly monitoring by
6 mental health staff, treatment as necessary, and steps to facilitate the transition of the inmate back into the
7 general population.

8
9 **NEW SECTION. Section 6. Supervisory oversight.** Procedures established pursuant to [section 3(7)]
10 must:

11 (1) provide that an adult inmate in restrictive housing or protective custody must receive daily visits from
12 the shift supervisor or supervisor in charge, daily visits from a qualified health care professional unless more
13 frequent visits are indicated, and visits from members of the program staff on request;

14 (2) require that an adult inmate in restrictive housing is personally observed by a correctional officer at
15 least every 30 to 60 minutes on an irregular schedule. An adult inmate who is violent or mentally disordered or
16 who demonstrates unusual or bizarre behavior must receive more frequent observation. Suicidal offenders must
17 be under continuing observation.

18 (3) govern the selection criteria, supervision, and rotation of staff who work directly with inmates in
19 restrictive housing units on a regular and daily basis.

20
21 **NEW SECTION. Section 7. Recordkeeping.** (1) A facility with a restrictive housing unit shall comply
22 with the general recordkeeping requirements provided in department policy.

23 (2) Procedures adopted pursuant to [section 3(7)] must require that staff operating restrictive housing
24 units maintain permanent logs and records that adequately document the activities, programs, and visitation
25 patterns of the unit and of individual inmates. Staff shall maintain records that include the following:

26 (a) all admissions and releases, including date of action, time of action, reason for admission or release,
27 and authorizing official or committee;

28 (b) a record of visitors, including all official visits by staff members, medical staff visits, and the time, date,
29 and signature of each visitor;

30 (c) notations of unusual behavior by an inmate or the inmates in the unit as a whole; and

1 (d) information from and observations by staff that are forwarded for staff action and observation during
2 future shifts.

3
4 **NEW SECTION. Section 8. Conditions of confinement.** (1) (a) An inmate in restrictive housing must
5 be provided with:

6 (i) prescribed medication;

7 (ii) other medically necessary treatment as prescribed by a qualified health care provider;

8 (iii) clothing that is not degrading or specialized clothing when reasons for its use are documented;

9 (iv) access to basic personal items for use in the inmate's cell unless there is imminent danger that the
10 inmate or any other inmate will destroy the item or induce self-injury;

11 (v) the opportunity to shower and shave at least three times each week;

12 (vi) laundry, barbering, and hair care services; and

13 (vii) the opportunity to exchange clothing, bedding, and linen on the same basis as inmates in the general
14 population.

15 (b) Exceptions to the requirements in subsection (1)(a) may be permitted if found necessary by a
16 supervisor. Exceptions must be recorded in the inmate's log and justified in writing.

17 (2) A facility may provide alternative meal service to an inmate who uses food or food service equipment
18 in a manner that is hazardous to self, staff, or other inmates. Service may be provided on an individual basis
19 based only on health or safety considerations and must meet basic nutritional requirements and occur only with
20 the written approval of the administrator or chief health care authority. The food substitution period may not
21 exceed 7 days.

22 (3) Procedures adopted pursuant to [section 3(7)] must provide that whenever an adult or youth inmate
23 is deprived of any usually authorized item or activity, a report of the action must be filed in both the inmate's log
24 and the inmate's case record and forwarded to the facility's chief of security.

25
26 **NEW SECTION. Section 9. Programs, services, and access to legal and reading materials.** (1) An
27 inmate in a restrictive housing unit shall have:

28 (a) the opportunity to write and receive letters on the same basis as inmates in the general population;

29 (b) opportunities for visitation unless there are substantial reasons for withholding visitation privileges.

30 If visitation privileges are withheld, the administrator shall approve the restriction.

1 (c) access to personal legal materials and available legal reference materials; and

2 (d) access to reading materials from the facility library.

3 (2) An inmate in administrative segregation or protective custody or an inmate housed in disciplinary
4 detention must have access to programs and services that include but are not limited to the following:

5 (a) educational services;

6 (b) commissary services;

7 (c) library services;

8 (d) social services;

9 (e) counseling services;

10 (f) religious guidance; and

11 (g) recreational programs.

12 (3) The programs and services described in subsections (1) and (2) are not required to be identical to
13 those provided in the facility's general population. However, there may not be major differences for any reasons
14 other than danger to life, health, or safety.

15 (4) An inmate with a disability may not be denied a reasonable accommodation simply because the
16 inmate is in restrictive housing or a similar condition, unless safety or security concerns render the
17 accommodation unreasonable.

18

19 **NEW SECTION. Section 10. Exercise outside of cell.** (1) An adult inmate in restrictive housing or
20 protective custody must be allowed a minimum of 1 hour of exercise each day outside of the inmate's cell, 5 days
21 a week, unless security or safety considerations dictate otherwise.

22 (2) A youth inmate in protective custody must be allowed 1 hour of large muscle activity every 24 hours.

23

24 **NEW SECTION. Section 11. Telephone privileges.** (1) An adult inmate in restrictive housing for
25 administrative segregation or protective custody or a youth in protective custody is allowed telephone privileges.

26 (2) Unless security or safety considerations dictate otherwise, an inmate in restrictive housing is allowed,
27 at minimum, telephone privileges to access the judicial process, to call an attorney of record, and during family
28 emergencies as determined by the administrator or the administrator's designee.

29

30 **NEW SECTION. Section 12. Requirements for youth facilities.** (1) Except as provided in subsection

1 (2), a facility that houses youth inmates may not use restrictive housing.

2 (2) The administrator or the administrator's designee may order a youth to be placed in protective
3 custody for temporary confinement not to exceed 24 hours when it is necessary to protect the youth or others.
4 The action must be reviewed by the facility administrator within 4 hours regardless of weekends or holidays, or
5 the next morning if the youth is placed in protective custody after 9 p.m.

6 (3) Procedures adopted pursuant to [section 3(7)] must provide special management for a youth inmate
7 with serious behavior problems and for a youth who requires protective care.

8 (4) A youth facility shall develop individual program plans and provide appropriate services that may
9 require youth inmates to be separated from the general population.

10 (5) A youth in protective custody must be allowed out of cell for more than 2 hours in a 24-hour period.

11 (6) A youth in protective custody must be observed by staff at least every 15 minutes.

12 (7) A youth in protective custody must be visited at least once each day by staff from administrative,
13 clinical, social work, religious, or medical units.

14
15 **NEW SECTION. Section 13. Step-down programs -- release directly from restrictive housing.** (1)

16 A facility shall establish step-down programs and offer them to an inmate who has been in restrictive housing for
17 more than 30 days to facilitate reintegration of the inmate into the general population or the community.
18 Step-down programs must, at a minimum, include the following:

19 (a) a prescreening evaluation;

20 (b) monthly evaluations using a multidisciplinary approach to determine the inmate's compliance with
21 program requirements;

22 (c) subject to monthly evaluations, gradually increasing out-of-cell time, group interaction, education and
23 programming opportunities, and privileges;

24 (d) a step-down transition compliance review; and

25 (e) a postscreening evaluation.

26 (2) (a) A facility shall attempt to ensure that an inmate is not released directly into the community after
27 30 days or more in restrictive housing.

28 (b) In the event that the release of an inmate directly from restrictive housing into the community is
29 imminent, the facility shall document the justification and, unless the justification is an immediate court-ordered
30 release, obtain approval from the department director or the director's designee.

1 (c) In addition to general release protocols, when an inmate is released directly into the community from
2 more than 30 days of restrictive housing, at a minimum, the facility shall take the following steps, at a minimum,
3 unless the justification is an immediate court-ordered release:

- 4 (i) development of a release plan tailored to the specific needs of the inmate;
5 (ii) notification of the inmate's release to state and local law enforcement;
6 (iii) notification to the inmate of applicable community resources; and
7 (iv) victim notification, if applicable.

8

9 **NEW SECTION. Section 14. Appropriation.** (1) (a) There is appropriated \$150,000, from the general
10 fund to the department of corrections for the biennium beginning July 1, 2019, for the purpose of building a fence
11 at the Montana state prison.

12 (b) The legislature intends that the appropriation in subsection (1)(a) be a one-time-only appropriation.

13 (2) (a) There is appropriated \$50,000 from the general fund to the department of corrections for the
14 biennium beginning July 1, 2019, to implement data tracking related to the use of restrictive housing.

15 (b) The legislature intends that the appropriation in subsection (2)(a) be considered as part of the
16 ongoing base for the next legislative session.

17

18 **NEW SECTION. Section 15. Codification instruction.** [Sections 1 through 13] are intended to be
19 codified as an integral part of Title 53, chapter 30, and the provisions of Title 53, chapter 30, apply to [sections
20 1 through 13].

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22 **NEW SECTION. Section 16. Effective date.** [This act] is effective July 1, 2019.

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- END -