
Part 7

Restrictive Housing

Part Compiler's Comments

Effective Date: Section 16, Ch. 482, L. 2019, provided that this part is effective January 1, 2020.

Part Cross-References

Criminal justice policy — rights of convicted, Art. II, sec. 28, Mont. Const.

Correctional policy, 46-18-101.

Department of Corrections, Title 53, ch. 1, part 2.

53-30-701. Policy — restrictive housing. (1) It is the policy of the state of Montana that the department of corrections and the facilities it operates or with which it contracts maintain safe, secure housing for inmates who require separation from the general inmate population for detention or for safety and security reasons.

(2) Restrictive housing should be used only:

(a) as a response to the most serious and threatening behavior;

(b) for the shortest time possible; and

(c) with the least restrictive conditions possible.

History: En. Sec. 1, Ch. 482, L. 2019.

53-30-702. Definitions. As used in this part, the following definitions apply:

(1) "Administrative segregation" means a nonpunitive housing status for inmates whose continued presence in the general population may pose a serious threat to life, property, self, staff, other inmates, or the facility's security or orderly operation.

(2) "Administrator" means the official, regardless of local title, who is ultimately responsible for the operation and management of a division, facility, or program.

(3) "Department" means the department of corrections provided for in 2-15-2301.

(4) "Disability" means a physical or mental impairment that substantially limits one or more of a person's major life activities, a person who has a record of such an impairment, or a person who is regarded as having such an impairment.

(5) "Disciplinary detention" means a form of separation from the general population in which an inmate who has committed a serious violation of conduct regulations is confined to an individual cell by a disciplinary committee or other authorized group for short periods of time.

(6) "Facility" means a state prison as defined in 53-30-101(1), (2), and (4) or a correctional facility pursuant to 52-5-101.

(7) "Mental disorder" means exhibiting impaired emotional, cognitive, or behavioral functioning that interferes seriously with an individual's ability to function adequately except with supportive treatment or services. The individual also must:

(a) currently have or have had within the past year a diagnosed mental disorder; and

(b) currently exhibit significant signs and symptoms of a mental disorder.

(8) "Postpartum" means the first 6 weeks after delivery.

(9) "Prehearing confinement" means a short-term, nonpunitive housing status that is used to safely and securely control high-risk or at-risk inmates.

(10) "Protective custody" means a form of separation from the general population for an inmate who requests or requires protection from other inmates for reasons of health or safety.

(11) "Qualified mental health professional" includes psychiatrists, psychologists, psychiatric social workers, licensed professional counselors, psychiatric nurses, or others who, by virtue of their education, credentials, and experience, are permitted by law to evaluate and care for the mental health needs of patients.

(12) "Restrictive housing" means a placement that requires an inmate to be confined to a cell for at least 22 hours a day for the safe and secure operation of the facility. The term includes administrative segregation, protective custody, and disciplinary detention if the conditions of confinement require inmates to be confined to a cell for at least 22 hours a day.

(13) (a) "Severe mental illness" means a substantial organic or psychiatric disorder of thought, mood, perception, orientation, or memory that significantly impairs judgment, behavior, or the ability to cope with the basic demands of life.

(b) Intellectual disability, epilepsy, other developmental disabilities, alcohol or substance abuse, or brief periods of intoxication or criminal behavior do not alone constitute severe mental illness. The individual must also:

(i) currently have or have had within the past year a diagnosed mental disorder; and

(ii) currently exhibit significant signs and symptoms of a mental disorder.

(14) "Step-down program" means an individualized program that includes a system of review and establishes criteria to prepare an inmate for transition to the general population or the community and that involves a coordinated, multidisciplinary team approach that includes mental health, case management, and security practitioners.

(15) "Temporary confinement" has the same meaning as "prehearing confinement" as defined in this section.

History: En. Sec. 2, Ch. 482, L. 2019; amd. Sec. 53, Ch. 339, L. 2021; amd. Sec. 1, Ch. 557, L. 2021.

Compiler's Comments

2021 Amendments — Composite Section: Chapter 339 in definition of facility after "state prison" inserted "as", substituted "53-30-101(1), (2), and (4)" for "53-30-101(3)(c)(i) through (3)(c)(iii) and (3)(c)(v)", and before "correctional facility" deleted "youth". Amendment effective October 1, 2021.

Chapter 557 in definition of restrictive housing in second sentence at end after "detention" inserted "if the conditions of confinement require inmates to be confined to a cell for at least 22 hours a day"; inserted definition of severe mental illness; and made minor changes in style. Amendment effective July 1, 2021.

53-30-703. General requirements for restrictive housing — procedures. (1) An inmate may be housed in administrative segregation during an investigation of alleged violations.

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

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

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

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

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

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

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

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

(7) A facility shall establish written operational procedures to govern restrictive housing and protective custody units for the supervision of inmates under administrative segregation, disciplinary detention, prehearing confinement, and protective custody. The operational procedures that govern restrictive housing and protective custody must incorporate American correctional association standards that do not conflict with the provisions of this part.

(8) The administrator, a shift supervisor, or a designee of either the administrator or a shift supervisor of an adult facility may order immediate segregation or placement in a restrictive housing unit when it is necessary to protect the inmate or others. The action must be reviewed within 24 hours by the appropriate supervisor.

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

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

History: En. Sec. 3, Ch. 482, L. 2019.

53-30-704 through 53-30-706 reserved.

53-30-707. Admission — status review. (1) The procedures established by an adult facility as required in 53-30-703(7) must include:

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

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

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

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

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

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

(g) that an inmate held in disciplinary detention for a period exceeding 60 days must be provided the same program services and privileges as inmates in administrative segregation or protective custody. The administrator or the administrator's designee shall review and approve the services and privileges to be allowed under this subsection (1)(g).

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

History: En. Sec. 4, Ch. 482, L. 2019.

53-30-708. Mental health status review. (1) When a housing or management unit exists for adult or youth inmates with a mental disorder, procedures adopted pursuant to 53-30-703(7) must provide for placements, assessments, specialized treatments, program services, and scheduled case reviews by qualified mental health professionals in accordance with policies established by the department.

(2) Upon notification that an inmate has been placed in restrictive housing, a qualified health care professional will review the inmate's health record. If an existing medical, mental health, or dental need requires accommodation, custody staff must be notified.

(3) When reviewing the health records of an inmate with a mental disorder who has been placed in restrictive housing, a qualified health care professional shall notify mental health staff. This review and notification must be documented in the inmate's health record.

(4) The procedures established pursuant to 53-30-703(7) must provide that an inmate entering restrictive housing must be seen and assessed by a qualified mental health professional or health care professional, in accordance with the national commission on correctional health care standards. Each contact must be documented in the inmate's record, and the notation must contain, at a minimum, a status report and the date and time of the contact. Individual documentation must be filed in the inmate's medical and mental health records.

(5) A qualified mental health professional shall complete a mental health appraisal within the period set by American correctional association standards after an inmate's placement in restrictive housing. The appraisal may include a mental health review that has been completed by health care personnel at the time the inmate is placed in restrictive housing. If confinement continues beyond 30 days, a qualified mental health professional shall complete an updated mental health appraisal with the frequency set by American correctional association standards for an inmate with a diagnosed mental disorder and more frequently if clinically indicated. For an inmate without a mental disorder, the appraisal must be completed with the frequency set by American correctional association standards and more frequently if clinically indicated. The mental health appraisal must be conducted in a manner that ensures confidentiality. Dissemination of any information obtained in the mental health appraisal must be for the limited purpose of institutional safety and security.

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

History: En. Sec. 5, Ch. 482, L. 2019; amd. Sec. 2, Ch. 557, L. 2021.

Compiler's Comments

2021 Amendment: Chapter 557 in (1) near beginning substituted "youth inmates with a mental disorder" for "youth inmates with mental health issues, a mental disorder, or mental illness"; in (3) in first sentence near middle substituted "who has been placed in restrictive housing, a qualified health care professional shall notify" for "health staff shall assess the risk of exacerbation of mental disorder and notify"; in (4) in second sentence near middle substituted "documented in the inmate's record" for "documented on the inmate's log" and in third sentence substituted "documentation" for "logs"; in (5) substituted current text for former text (see 2021 Session Law for former text); in (6) in two places substituted "severe mental illness" for "serious mental disorder"; and made minor changes in style. Amendment effective July 1, 2021.

53-30-709. Supervisory oversight. Procedures established pursuant to 53-30-703(7) must:

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

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

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

History: En. Sec. 6, Ch. 482, L. 2019.

53-30-710. Recordkeeping. (1) A facility with a restrictive housing unit shall comply with the general recordkeeping requirements provided in department policy.

(2) Procedures adopted pursuant to 53-30-703(7) must require that staff operating restrictive housing units maintain permanent logs and records that adequately document the activities, programs, and visitation patterns of the unit and of individual inmates. Staff shall maintain records that include the following:

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

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

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

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

History: En. Sec. 7, Ch. 482, L. 2019.

53-30-711 through 53-30-715 reserved.

53-30-716. Conditions of confinement. (1) (a) An inmate in restrictive housing must be provided with:

(i) prescribed medication;

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

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

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

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

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

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

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

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

(3) Procedures adopted pursuant to 53-30-703(7) must provide that whenever an adult or youth inmate is deprived of any usually authorized item or activity, a report of the action must be filed in both the inmate's log and the inmate's case record and forwarded to the facility's chief of security.

History: En. Sec. 8, Ch. 482, L. 2019.

53-30-717. Programs, services, and access to legal and reading materials. (1) An inmate in a restrictive housing unit shall have:

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

(b) opportunities for visitation unless there are substantial reasons for withholding visitation privileges. If visitation privileges are withheld, the administrator shall approve the restriction.

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

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

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

- (a) educational services;
- (b) commissary services;
- (c) library services;
- (d) social services;
- (e) counseling services;
- (f) religious guidance; and
- (g) recreational programs.

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

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

History: En. Sec. 9, Ch. 482, L. 2019.

53-30-718. Exercise outside of cell. (1) An adult inmate in restrictive housing or protective custody must be allowed a minimum of 1 hour of exercise each day outside of the inmate's cell, 5 days a week, unless security or safety considerations dictate otherwise.

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

History: En. Sec. 10, Ch. 482, L. 2019.

53-30-719. Telephone privileges. (1) An adult inmate in restrictive housing for administrative segregation or protective custody or a youth in protective custody is allowed telephone privileges.

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

History: En. Sec. 11, Ch. 482, L. 2019.

53-30-720. Requirements for youth facilities. (1) Except as provided in subsection (2), a facility that houses youth inmates may not use restrictive housing.

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

(3) Procedures adopted pursuant to 53-30-703(7) must provide special management for a youth inmate with serious behavior problems and for a youth who requires protective care.

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

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

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

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

History: En. Sec. 12, Ch. 482, L. 2019.

53-30-721 through 53-30-724 reserved.

53-30-725. Step-down programs — release directly from restrictive housing. (1) A facility shall establish step-down programs and offer them to an inmate who has been in restrictive housing for more than 30 days to facilitate reintegration of the inmate into the general population or the community.

Step-down programs must, at a minimum, include the following:

- (a) a prescreening evaluation;

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

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

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

(e) a postscreening evaluation.

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

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

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

(i) development of a release plan tailored to the specific needs of the inmate;

(ii) notification of the inmate's release to state and local law enforcement;

(iii) notification to the inmate of applicable community resources; and

(iv) victim notification, if applicable.

History: En. Sec. 13, Ch. 482, L. 2019.