

STATE OF RHODE ISLAND



Department of Corrections

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The Honorable Robert E. Craven, Esq.
House Committee on Judiciary
82 Smith Street
Providence, RI 02903

April 13, 2022

Re: H7760 – Act Relating to State Affairs and Government – Restrictive Housing at Correctional Facilities Act

Dear Chairperson Craven:

This evening the House Committee on Judiciary will consider House Bill# H7760, which will mandate the Rhode Island Department of Corrections (RIDOC) to change, expand and develop new corrections policies and practices. While some provisions of the bill are currently practiced at the Department, others are impractical, dangerous, and contrary to best correctional practices which will jeopardize RIDOC's statutory obligations to run a safe and secure corrections system. This bill also creates unfunded mandates that will require significant additional funding to an already stretched budget. The Department continues to have significant concerns regarding this legislation.

One of the biggest challenges the Department faces when engaging with those who have not been in its facilities is overcoming the misconception of what actually happens inside the Adult Correctional Institutions (ACI). While prison life is stressful, it is important to note that the courts are responsible for sentencing. The RIDOC is responsible for the living conditions, which are clean safe and constitutional, of who those in its custody. While battling constrained budgets, recruitment challenges and an ever-evolving balancing act between security measures and rehabilitative programming, with the goal of reducing recidivism, corrections competes with the overdramatized and outdated image shown to the public. Dramatic films, scripted reality television and sensationalized stories contradict the real conditions that exist in our facilities. It is these inaccurate perceptions that lead to legislation that is wrong, dangerous and nothing short of frightening.

Committee members and the sponsors of this legislation should know and understand that the Department remains in litigation and mediation regarding restrictive housing. According to federal court rules, all specific information regarding mediations is confidential and cannot be shared at this time. The cases also remain active in litigation. As reflected in the public court files, there are Motions pending regarding discovery and expert tours and discovery continues to be on-going. I have serious concerns about legislation that may run contrary to any recommendations or orders which may be made by the court, as well as the impact that any resulting inconsistencies may have on the Department.

The RIDOC prioritizes the health and wellbeing of all individuals remanded to its custody and has worked proactively to ensure all incarcerated individuals may access necessary and available mental health services. Our incarcerated population provides a complex clinical picture because of the nature of their mental health issues [5 to 15% of our population present with serious and persistent mental illness (SPMI); the percentage of incarcerated individuals prescribed psychiatric medication ranges from 30 to 50% depending upon the population] and substance abuse histories (70 to 80% of our population). Those with both diagnoses, in combination with their overall compromised physical health status, are especially complex. Any individual placed in restrictive housing is evaluated by medical and mental health professionals and may request medical and mental health assistance at any time during their placement. If it is determined that placement is contraindicated, alternatives are sought. Those suffering with SPMI or a developmental or mental disability, are evaluated prior to placement in restrictive housing. Persons in restrictive housing are seen by medical staff and mental health staff several times a week. Those in Administrative Confinement, in the Residential Treatment Unit (RTU), an alternative to restrictive housing for individuals who demonstrate significant disruptive and violent behavior due to their SPMI, or in Transitional Confinement are evaluated by multidisciplinary teams at least monthly and in many cases more frequently. The Department is working to establish a Behavioral Management Unit (BMU) which would accommodate incarcerated individuals designated as SPMI who are unsuccessful in adjusting to living among the general population. The proposed FY23 Budget funds the Department's ability to conduct a feasibility study to determine the appropriate site, needs, design, and cost for the unit. I strongly encourage the General Assembly to include this item in the budget.

Our inmate discipline policy provides a level of due process which exceeds that required by United States Supreme Court case law. In 2014, 2016, and again in 2018 after the special legislative commission to study and assess the use of restrictive housing at the ACI, the Department changed its discipline process and today only the most violent offenses subject someone to placement in restrictive housing long-term. All disciplinary actions, regardless of whether the sanction is placement in a restrictive housing setting, or a lesser sanction such as loss of privileges, are documented extensively and retained in perpetuity. All discipline hearings are recorded, and all documentation includes the reason for the sanction and the length of time imposed. Individuals placed in restrictive housing can request a suspension or reduction in the time imposed or receive an automatic classification review. Wardens of each facility have the authority to reduce an individual's time in restrictive housing or evaluate one's classification sooner than outlined by policy, and they do. The Department also runs step-down units for individuals coming from Administrative Confinement who are not ready to go back to general population.

Some requirements outlined in the bill will seriously undermine the Department's statutory obligations to run a safe, secure, and humane system. For example, a ban on placing persons under 23 and over 54 in a restrictive housing setting is extremely dangerous to everyone in the facilities. It would allow a person in one of those categories to commit any type of offense (i.e., sexual assault, murder, attempted murder, violent assaults, etc.) with complete impunity. Also, due to the current departmentwide limitations in infrastructure, staffing, and resources, expansion of out-of-cell time to the suggested durations for those in restrictive housing will create significant risks and/or are functionally impossible. In particular, major improvements to infrastructure in all of our facilities will be necessary to satisfy the mandates outlined in the bill. Additional concerns in this legislation include the broad definition of "vulnerable population," limitations to how often an individual may serve in disciplinary confinement, and other requirements that the privileges in restrictive housing mirror those in the general population, all of which will negatively impact our ability to maintain order and provide safety for all inmates in our custody.

Finally, portions of the language and definitions in the bill are overly broad and confusing. For instance, a single definition for Administrative Confinement is not appropriate. There are several classification statuses which address the conduct and needs of those who pose a threat to themselves, others, staff, or to the safe and secure running of the facilities. There are rehabilitative programs such as the RTU, pilot BMU, suicide prevention and observational statuses such as Constant Observation, Crisis Management Status and Psychological Observation; step down placements such as Transitional Confinement, Administrative Restrictive Status; Protective Custody; and loss of privileges status. All of these categories require different levels of restrictions, security, and number of correctional staff to maintain safety and security, as well as treatment, observation, programming, and appropriate medical, mental health, and rehabilitation needs. Lumping these into one category does a disservice to all and is inconsistent with best correctional practices and common descriptions on a national level. Uniformity in descriptions as they currently exist allows the Department to compare its practices with other jurisdictions and participate in national evaluations of ever-evolving best practices.

As to other provisions of the bill, the Department is not opposed to expansion of services, programs, therapies, step-down and transitional placements/programs, individual treatment plans, etc.; however, substantial additional funding will be necessary to implement such changes and to comply with the suggested mandates of the proposed bill.

I would be remiss if I did not again invite the elected members of this committee and any elected members of the General Assembly to join me for a tour of the ACI. You are likely to hear testimony from formerly incarcerated individuals, some of whom have not been incarcerated for a decade or more, community advocates, RIDOC staff, RIBCO leadership, and others, and I believe members of the General Assembly would benefit tremendously from a firsthand look at how our facilities are run. We are happy to individually accommodate schedules to ensure members have the perspective needed to consider this and other corrections legislation.

I am hopeful that the level of transparency I am offering conveys to members the confidence this department has that our treatment of those in our custody is humane, constitutional and guided by best correctional practices.

Thank you for the opportunity to comment on this legislation.

Sincerely,



Patricia A. Coyne-Fague, Esq.

Director

- cc: Honorable members of the House Judiciary Committee
- Honorable members of the House Finance Subcommittee on Public Safety
- The Honorable Representatives Kazarian, Williams, Alzate, Kislak, Morales, Potter, Giraldo, Slater