

103 CMR 179.00: RESTRICTIVE HOUSING OVERSIGHT COMMITTEE

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179.01: Purpose

103 CMR 179.00 establishes regulations for the operation of the Restrictive Housing Oversight Committee.

179.02: Cancellation

103 CMR 179.00 cancels all previous policy statements, rules or regulations regarding the operation of the Restrictive Housing Oversight Committee to the extent they are inconsistent with 103 CMR 179.00.

179.03: Applicability

103 CMR 179.00 is applicable to the Restrictive Housing Oversight Committee and all members of the Restrictive Housing Oversight Committee. 103 CMR 179.00 is not intended to confer any procedural or substantive rights not otherwise granted by state or federal law.

179.04: Access to Regulation

The Department of Correction shall maintain an employee accessible copy of 103 CMR 179.00 within its Central Policy File. Each Superintendent and each Sheriff shall maintain a copy of 103 CMR 179.00 within his or her Central Policy File and at each inmate library.

179.05: Definitions

Administrator. The chief administrative officer of a county correctional facility.

Commissioner. The Commissioner of Correction.

Correctional Facility or Institution. Any building, enclosure, space or structure used for the custody, control and rehabilitation of committed offenders and of such other persons as may be placed in custody therein in accordance with law.

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County Correctional Facility. Any correctional facility owned, operated, administered or subject to the control of a county of the Commonwealth.

Department Disciplinary Unit (DDU). A restricted area or areas designated by the Commissioner to which an inmate has received a sanction recommended by a Special Hearing Officer in accordance with 103 CMR 430.00: *Inmate Discipline*.

Disciplinary Restrictive Housing. A placement in restrictive housing, which includes the DDU, in a state or county correctional facility for disciplinary purposes after a finding has been made that the inmate has committed a breach of discipline.

Inmate. A committed offender or such other person as is placed in custody in a correctional facility in accordance with law.

Qualified Mental Health Professionals. Treatment providers who are psychiatrists, psychologists, psychiatric social workers, psychiatric nurses, and 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.

Restrictive Housing. A placement for disciplinary or non-disciplinary purposes that requires an inmate to be confined to a cell for at least 22 hours per day for the safe and secure operation of the facility. For purposes of 103 CMR 179.00, restrictive housing shall not include the following: any placement ordered by a medical or mental health provider, including but not limited to, the placement of an inmate in a Health Services Unit; the placement of an inmate in a hospital; the placement of an inmate in a medical setting where treatment is being provided; or the placement of an inmate on a mental health watch.

Restrictive Housing Oversight Committee. The Restrictive Housing Oversight Committee, hereinafter "Committee," that is established pursuant to M.G.L. c. 127, § 39G, consisting of: the Secretary of the Executive Office of Public Safety and Security or a designee, who shall serve as chair; the Commissioner of the Department of Correction or a designee; the Commissioner of Mental Health or a designee; and nine members appointed by the Governor, one of whom shall be a correctional administrator with expertise in prison discipline or prison programming, one of whom shall be a member of a correctional officers union, one of whom shall have significant and demonstrated experience in criminal justice or corrections policy research, one of whom shall be the president of the Massachusetts Sheriffs Association, Inc. or a designee, one of whom shall be a former judge designated by the Chief Justice of the Supreme Judicial Court, one of whom shall be the Executive Director of Disability Law Center, Inc. or a designee, one of whom shall be the Executive Director of Prisoners' Legal Services or a designee, one of whom shall be the Executive Director of the Massachusetts Association for Mental Health, Inc. or a designee, and one of whom shall be a licensed social worker designated by the Massachusetts chapter of the National Association of Social Workers, Inc.

Serious Mental Illness (SMI). A current or recent diagnosis by a Qualified Mental Health Professional of one or more of the following disorders described in the 5th edition of the *Diagnostic and Statistical Manual of Mental Disorders*:

- (a) schizophrenia and other psychotic disorders;
- (b) major depressive disorders;
- (c) all types of bipolar disorders;
- (d) a neuro-developmental disorder, dementia or other cognitive disorder;
- (e) any disorder commonly characterized by breaks with reality or perceptions of reality;
- (f) all types of anxiety disorders;
- (g) trauma and stressor related disorders; or
- (h) severe personality disorders; or a finding by a Qualified Mental Health Professional that the inmate is at serious risk of substantially deteriorating mentally or emotionally while confined in restrictive housing, or already has so deteriorated while confined in restrictive housing, such that diversion or removal is deemed to be clinically appropriate by a Qualified Mental Health Professional.

179.05: continued

Sheriff. The individual elected to the office of Sheriff for a county in accordance with M.G.L. c. 37, § 1 and M.G.L. c. 54, § 159.

State Correctional Facility. Any correctional facility owned, operated, administered or subject to the control of the Massachusetts Department of Correction.

179.06: Conflict of Interest

Pursuant to M.G.L. c. 127, § 39G (a), members of the Committee shall be considered special state employees for purposes of M.G.L. c. 268A. Each Committee member shall adhere to all applicable provisions of M.G.L. c. 268A.

179.07: Open Meeting Law

The Committee shall comply with all relevant provisions of the Commonwealth's Open Meeting Law, M.G.L. c. 30A, §§ 18 through 25, and 940 CMR 29.00: *Open Meetings*. The Committee shall post notice of every meeting in accordance with M.G.L. c. 30A, § 20(b) and (c), and 940 CMR 29.03(1), (6) and (7). The minutes of all meetings subject to the Open Meeting Law, M.G.L. c. 30A, §§ 18 through 25 shall be kept and maintained by the Chair of the Committee or designee.

179.08: Committee Protocol

The Committee shall adopt protocols consistent with M.G.L. c. 30A, §§ 18 through 25, and 940 CMR 29.00: *Open Meetings* necessary to govern the proceedings of the Committee including, but not limited to, bylaws, rules and procedures; the designation of a quorum; the development of an agenda; and the keeping and maintenance of minutes. The Committee may adopt Robert's Rules of Order or other such provisions to maintain order and facilitate the conduct of meetings in a democratic, orderly and expeditious manner.

179.09: Compensation and Expenses

Pursuant to M.G.L. c. 127, § 39G(a), members of the Committee shall serve without compensation, but may be reimbursed for all reasonable expenses incurred in the performance of their official duties.

179.10: Reporting Responsibilities of the Committee

Pursuant to M.G.L. c. 127, § 39G(b), the Committee shall gather information regarding the use of restrictive housing in correctional institutions to determine the impact of restrictive housing on inmates, rates of violence, recidivism, incarceration costs and self-harm within correctional institutions. The Committee may request that the Commissioner or the Sheriffs provide documents and data regarding the use of restrictive housing. While the Committee may request documents or data in a particular format, it shall be up to the Commissioner or the Sheriffs to determine in which format the data or documents will be provided.

179.11: Statements and Press Releases

No Committee member shall make any statement to the public or press on behalf of the Committee about any matters pending before the Committee, or a statement that purports to be made on behalf of the Committee, unless approved by the Committee to do so.

179.12: Reporting Responsibilities of the Commissioner and the Sheriffs

Pursuant to M.G.L. c. 127, § 39D (a), the Commissioner shall publish monthly and provide directly to the Committee the number of inmates held in restrictive housing within each state and county correctional facility; the reports shall include the number of inmates for each unit in which inmates are held in restrictive housing. The Commissioner shall determine the format of said report and the manner of compiling and reporting said information.

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Pursuant to M.G.L. c. 127, § 39D (b), the Commissioner shall publish a report quarterly and provide directly to the Committee, as to inmates in restrictive housing, within each state correctional facility, and annually, as to inmates in restrictive housing within each county correctional facility:

- (a) the number of inmates as to whom a finding of serious mental illness has been made and the number of such inmates held for more than 30 days;
- (b) the number of inmates who have committed suicide or committed non-lethal acts of self-harm;
- (c) the number of inmates according to the reason for their restrictive housing;
- (d) as to inmates in disciplinary restrictive housing, a listing of inmates with names redacted, including an anonymized identification number that shall be consistent across reports, age, race, gender and ethnicity, whether the inmate has an open mental health case, the date the inmate commenced serving a disciplinary restrictive housing sanction, the length of the inmate's disciplinary restrictive housing sanction, and a summary of the reason for the inmate's disciplinary restrictive housing sanction;
- (e) the number of placement reviews conducted pursuant to M.G.L. c. 127, § 39B(a), clause (iv) and (v) and the number of inmates released from restrictive housing as a result of such placement reviews;
- (f) the length of original assignment to and total time served in disciplinary restrictive housing for each inmate released from disciplinary restrictive housing as a result of a placement review;
- (g) the count of inmates released to the community directly or within 30 days of release from restrictive housing;
- (h) the known disabilities of every inmate who was placed in restrictive housing during the previous three months;
- (i) the number of mental health professionals who work directly with inmates in restrictive housing;
- (j) the number of transfers to outside hospitals directly from restrictive housing; and
- (k) such additional information as the Commissioner may determine.

The reports shall include the number of inmates for each unit in which inmates are held in restrictive housing. The information shall be published in a commonly available electronic, machine readable format. Pursuant to M.G.L. c. 127, § 39D(c), the administrators of county correctional facilities shall timely furnish to the Commissioner all information that the Commissioner deems necessary to support reporting pursuant to M.G.L. c. 127, § 39D in a form and format agreed upon by the Commissioner and county administrators.

179.13: Access to Correctional Facilities

Pursuant to M.G.L. c. 127, § 39G(c), the Commissioner and the Sheriffs shall provide Committee members with access to all correctional institutions consistent with the duties of the Committee. The Committee shall identify the specific correctional institution(s) to be accessed and specify the date(s) and timeframe(s) during which such member(s) may seek such access. The Committee shall ensure that less than a quorum, as defined by M.G.L. c. 30A, § 18, is present at any one correctional institution at the same time. The Committee Chair shall then notify the Commissioner or the respective Sheriff of such information and request that access be afforded to the specified correctional institution(s) on the specified date(s) and timeframe(s) and provide a list of Committee members who will be seeking access to the facilities. Entrance of Committee members shall be subject to all Department of Correction and county rules and regulations governing entrance and visitation. In no instance may any Committee member, while acting as a Committee member, seek access to a correctional facility for any reason other than to conduct official Committee business. Nothing in 103 CMR 179.13 shall be construed to limit any individual Committee member's access to a correctional institution or inmate as a private citizen acting solely for personal or professional reasons unrelated to their work as a Committee member.

179.14: Access to Inmates and Staff

Pursuant to M.G.L. c. 127, § 39G(c), Committee members shall be allowed to interview inmates and staff of state and county correctional facilities, with their consent.

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The Committee shall provide the Commissioner or relevant Sheriff with advance notice of the names or identities of the staff members and, if known, of inmates whom the Committee members wish to interview. The Committee members may also interview any previously unidentified inmates, with their consent, while on site at any correctional facility. In no instance may a Committee member, while acting as a Committee member, interview inmates or staff about any matter that is unrelated to official Committee business. In no instance shall the Committee or Committee members be entitled to access any personal or personnel information of state or county employees or of any vendors or volunteers for the state or county facilities, other than aggregate training data so as to permit the Committee to assess the extent to which staff who work with inmates in restrictive housing receive specialized training. Nothing contained in 103 CMR 179.00 shall compel any staff member, vendor, volunteer, or inmate to be interviewed in whole or in part, to waive any privilege, or to waive any entitlement of confidentiality. Without a written release from the inmate, neither the Committee nor any Committee member shall be entitled to access any non-public information or records pertaining to such inmate, including but not limited to, medical records and Criminal Offender Record Information under M.G.L. c. 6, § 167 *et seq.*

179.15: Limitations on Use of Information and Documents by the Committee and Committee Members

Nothing contained in 103 CMR 179.00 shall be construed as limiting or constraining Committee members from properly obtaining or accessing non-public information when such individual is acting as a Committee member. In no instance, however, shall any member of the Committee use any non-public information, data, and/or records obtained through or as a result of any member's work on the Committee, other than in the manner specified in M.G.L. c. 127, § 39G and 103 CMR 179.00. To ensure that the rights of all inmates, including but not limited to, privacy rights and rights under M.G.L. c. 6, §§ 167 through 178(b), are protected, in addition to any and all requirements of the Open Meeting Law, M.G.L. c. 30A, §§ 18 through 25 and 940 CMR 29.00: *Open Meetings*, at any Committee meeting, regardless of whether the Committee meets in a session open to the public or in executive session, the following requirements and restrictions apply. Unless a written waiver is obtained from the inmate, neither the Committee nor any Committee member shall use, cite, enter as an exhibit, or rely on, any non-public document that identifies any inmate by name or inmate number or which, even if the inmate's name or inmate number is not used, would otherwise allow the identity of the inmate to be determined. Similarly, unless a written waiver is obtained from the inmate, neither the Committee nor any Committee member shall identify any inmate by name or otherwise divulge information of such a nature that would allow the identity of the inmate to be determined. Any document that the Committee or Committee member deems necessary to use, cite, enter as an exhibit, or rely on shall be redacted prior to its use at any meeting in such a manner so that the identity of any inmate cannot be determined. Pursuant to M.G.L. c. 30A, § 21(a)(1), the Committee shall not discuss the reputation, character, physical condition, or mental health of any identified inmate at any meeting unless a written waiver is obtained from the inmate. All requested documents obtained by the Committee or any Committee member pursuant to 103 CMR 179.16 shall be kept and maintained by the Chair of the Committee or designee.

179.16: Annual Report

Pursuant to M.G.L. c. 127, § 39C(d), the Committee shall annually, not later than January 31st, submit to the house and senate chairs of the joint committee on the judiciary and the house and senate chairs of the joint committee on public safety and homeland security a report offering its recommendations on the use of restrictive housing in the Commonwealth, including ways to minimize its use and improve outcomes for inmates and facility safety. The report shall also include the following information for each correctional institution:

- (a) the criteria for placing an inmate in restrictive housing;
- (b) the extent to which staff who work with inmates in restrictive housing receive specialized training;

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- (c) the results of evaluations of the process of restrictive housing in the Commonwealth and other states;
- (d) the impact of use of restrictive housing on prison order and control in correctional facilities;
- (e) the cost of housing an inmate in restrictive housing compared with the cost of housing an inmate in general population; and
- (f) the conditions of restrictive housing in the Commonwealth.

179.17: Emergency

Whenever in the opinion of the Commissioner or Sheriff an emergency exists which requires the suspension of part or all of 103 CMR 179.00, such suspension may be ordered for good cause.

179.18: Responsible Staff

The Commissioner shall oversee the implementation of 103 CMR 179.00 throughout the Department correctional facilities and monitor its implementation in county correctional facilities.

179.19: Annual Review

103 CMR 179.00 shall be reviewed at least annually by the Commissioner or a designee. The party or parties conducting the review shall develop a memorandum to the Commissioner with a copy to the Central Policy File indicating revisions, additions or deletions which shall be included for the Commissioner's written approval and shall become effective pursuant to applicable law.

179.20: Severability

If any article, section, subsection, sentence, clause or phrase of 103 CMR 179.00 is for any reason held to be unconstitutional, contrary to statute, in excess of the authority of the Commissioner or otherwise inoperative, such decision shall not affect the validity of any other article, section, clause or phrase of 103 CMR 179.00.

REGULATORY AUTHORITY

103 CMR 179.00: M.G.L. c. 6, §§ 167 through 178(b); M.G.L. c. 30A, §§ 18 through 25; M.G.L. c. 124, § 1(b), (c), (d), (i) and (q); M.G.L. c. 127, §§ 39D, 39G and 39H; 103 CMR 153.00; 103 CMR 430.00; 940 CMR 29.00.