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| Seal2  **CHARLES D. BAKER**  Governor  **KARYN E. POLITO**  Lt. Governor | The Commonwealth of Massachusetts  Executive Office of Public Safety and Security  One Ashburton Place, Room 2133  Boston, Massachusetts 02108  Tel: (617) 727-7775  TTY Tel: (617) 727-6618  Fax: (617) 727-4764  [www.mass.gov/eops](http://www.mass.gov/eops) | **TERRENCE M. REIDY**  Acting Secretary |

**RESTRICTIVE HOUSING OVERSIGHT COMMITTEE**

Date: September 23, 2021

Time: 1:00PM

Place: Microsoft Teams (Virtual Meeting)

**Call to Order**

Chairman Peck called the meeting to order at 1:03PM once a quorum had been established.

*Members Present:*

Chairman Andrew Peck

Attorney Tatum Prichard

Attorney Bonnie Tenneriello

Attorney Bob Fleischner

Sean Medeiros

Hollie Matthews

Dr. Brandy Henry

Deputy Commissioner Chris Fallon

Joanne Barros

Kevin Flanagan

*Members Not Present:*

Sheriff Tom Bowler

Justice Gerri Hines

**August 2021 Meeting Minutes Review/Vote**

Atty. Tenneriello requested that the following be added to the August minutes:

“Despite repeated assurances that the requested documents will be provided by the Sheriff Departments, the annual data requested by this Committee have yet to be provided by the Sheriffs for the years of 2019 and 2020.”

The members unanimously approved the addition of Atty. Tenneriello’s statement to the August minutes. There was a motion to approve the minutes with the new language by Sean Medeiros. The motion was seconded by Atty. Fleischner. Dr. Henry and Kevin Flanagan both abstained from the vote. The remaining members in attendance voted in favor and the motion carried.

**Evaluating Other States - Subcommittee Presentation**

Atty. Fleischner began the presentation by giving the committee an overview of the research obtained by the subcommittee. He stated that the Liman Center at Yale Law School created a useful report which was the foundation of his analysis. Overall, he noted that sixteen states have laws which limit or prohibit restrictive housing for certain populations. The most common protected populations are youths, pregnant women including those who recently gave birth, and those with serious mental illness. He explained that the reforms can be found in Arkansas, Florida, Georgia, Massachusetts, Montana, New Mexico, Virgina, and Washington. The wide range of states demonstrates the national movement to reform restrictive housing across the political spectrum. Additionally, he noted that six states have restricted the use of restrictive housing for serious mental illness or substance abuse. He also stated that Montana and New Mexico have limited restrictive housing to forty-eight consecutive hours.

Dr. Henry then began her presentation on New Jersey by explaining that there has been social and political movement for restrictive housing reform in New Jersey since the 1980s, which appears to be the foundation for the recent reform. She spoke with a member of the ACLU who said that previous litigation regarding restrictive housing was unsuccessful until recently. Dr. Henry explained that in 2017, the New Jersey Department of Corrections created internal policies for restrictive housing based upon recommendations from national organizations who specialized in restrictive housing reform. She noted that the changes adopted by New Jersey are similar to the reforms passed here in Massachusetts. However, she stated that there appears to be a more inclusive process and roll out when implementing policies within the New Jersey DOC when compared to Massachusetts. She highlighted the fact that New Jersey had a committee with stakeholder representatives to provide feedback during the reform process. Dr. Henry then explained that the New Jersey DOC did not use restrictive housing in all facilities, only about half, and that the transportation program is replied upon heavily. Additionally, she noted how the 2018 statute codified the policy changes of their DOC while also expanding protected populations, required additional data reporting, and created specialty units within the facilities. She specifically noted that there is substantial public reporting on the DOC website which has been received positively by the community. She stated that New Jersey modified the rule violations for substance abuse, with inmates now being sent to a substance abuse program instead of restrictive housing. In conclusion, she noted that the earlier reforms led to a decreased use of restrictive housing however, the 2018 reforms have not been fully implemented due to COVID, so its impact is unclear.

Next, Sean Medeiros presented his findings on Colorado. He stated that Colorado is often the model for corrections reform as they were one of the first states to implement reforms. He noted that in 2013 Colorado saw significant changes with restrictive housing which were based on the American Disabilities Act, and the UN’s Nelson Mandella rules for solitary confinement. Mr. Medeiros explained how the director of the Department of Corrections spent twenty-four hours in restrictive housing to get firsthand experience of the conditions, ultimately leading to his personal push for reform. He noted that the changes in 2013 were not fully implemented until the fall of 2017. Some of the major changes included reducing restrictive housing to fifteen consecutive days, with anything longer having to be approved by director, and no more than twenty-two hours a day in the cell. He explained that part of the two hours out of the cell is for exercise and shower time. He stated that inmates in restrictive housing do not get programming, are allowed one phone call in first twenty-four hours which works out to basically one call in the first fifteen days, and the canteen is limited to hygiene with $10 dollars a week. Mr. Medeiros added that Colorado does not allow female inmates or individuals with serious mental illness in solitary confinement. He explained that Colorado utilizes a close custody special management control system which is based on the totality of risk presented by an offender. The unit was developed about five to six months ago and has three levels. It is capable of holding around 500-600 inmates for up to twelve months which is then reviewed by a classification committee to transition to a lower level, or the complete removal from the unit. He noted that anything beyond twelve months must be approved by the director. He then broke down the three levels within the unit starting with the high-risk inmates which were allowed up to four hours out of cell time for showers, recreation, and programming, although in restraints at all times. The next level down is called the management control comprehension unit which allows for 4 hours of out of cell time and also uses restraints at all times (tables, chairs). Last is the close custody transition unit, which allows for up to 6 hours out of cell time and begins in restraints which may later be removed. As for the number of inmates out of cell at a given time within this unit, Mr. Medeiros noted that for the top two risk units only 4 inmates are allowed out of cell together. For the close custody unit, there can be anywhere from 8 to 60 inmates out at once. He concluded by noting that Colorado will be able to provide further research as policy changes are completely implemented. He stated that while the overall numbers of inmates in restrictive housing have not gone down, the overall time spent in restrictive housing has decreased.

Joanne Barros then began her presentation on restrictive housing in Ohio. She noted that policy changes started before the legislative demands for reform. She stated that the Department of Corrections noticed that restrictive housing numbers were high, and a cohesive plan was needed. Ms. Barros then explained some of the changes that were implemented which included systems for oversight of placement into restrictive housing, addressing management roles that were not clearly defined, and requiring an initial form be completed within 24 hours of an inmate’s placement in restrictive housing by a staff member. Additionally, she noted exemptions for serious mental illness, inmates who are pregnant, the prohibition of youths, and the limitation of 29 consecutive days which can be extended if needed. If extended, the policy is 7 days for the first offense while on restrictive housing, then 14 days for a second offense, and 21 days for a third offense. She explained that managing officers have discretion to assign the appropriate security levels, and the managing officer has authority to release inmates early based on good behavior. Ms. Barros said the inmates on restrictive housing have access to legal services, sanitary products, and programming. As for areas of improvement, she noted that there needs to be clearly defined language regarding the authority for specific positions, and that the ability to extend an inmate’s stay on restrictive housing is contradictory. For useful policy changes by Ohio’s Department of Corrections, she highlighted the protected populations being prohibited from placement on restrictive housing, the opportunity to provide needed services to the inmates, and that before placement in restrictive housing there are exclusions for serious mental illness with good documentation guidelines.

Atty. Fleischner then began his presentation on New York. He noted that New York’s background for restrictive housing reform was not dissimilar to that of Massachusetts. He explained that policy changes were due to litigation, which was later codified by legislation. He noted the continued advocacy by prisoner rights groups which led to the recent legislation passed in 2021, the Solitary Confinement Act “HALT”. Atty. Fleischner explained that this act is the most sweeping legislation yet, set to be implemented by April 2022. He highlighted the reforms such as defining restrictive housing as being any form of cell confinement lasting more than 17 hours per day, which is the lowest in the country. Additionally, he noted that restrictive housing cannot be longer than 15 consecutive days. He stated that there are prohibited populations such as youths under the age of 21, inmates who are 55 or older, any inmate with a disability, and pregnant inmates or those caring for a child. He added that there is a prohibition against the denial of needed services, additional required staff training, and that the Department of Corrections is required to report on the use of restrictive housing.

Atty. Fleischner that presented on the international use of restrictive housing. He explained that he will now be referring to restrictive housing as solitary confinement which is the widely accepted term internationally. He noted two important treaties which govern the use of solitary confinement, the first being the 1976 International Covenant on Civil and Political Rights (“ICCPR”), and the 1984 UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“Torture Convention”). He stated that both treaties were ratified by the United States however, not all of the optional protocols were ratified. He also noted regional organizations which regulate the use of solitary confinement such as the Organization of American States. Atty. Fleischner then gave a brief history in which the Pennsylvania model of solitary confinement was the standard before the above-mentioned treaties. He noted that most of Europe had adopted the Pennsylvania model, with the last States to abandon this model being the Scandinavian countries during the 1960s. He then explained that both the ICCPR and the Torture Convention became the basis for 3 sets of rules, the first being the Istanbul Statement in 2007 that prohibits certain inmates from solitary confinement as a condition of their sentence such as the mentally ill, and youths. The second set of rules is the Bangkok Rules of 2010 which prohibits solitary confinement for pregnant women, including those providing childcare. The third set of rules are the Nelson Mandela Rules of 2015 which limits the number of consecutive days in solitary confinement to 15 days, incorporated the Bangkok Rules, and has become the standard globally. However, he noted that these rules are not binding in the United States but are looked to for guidance. He added that there are almost no bans internationally on the use of solitary confinement due to an inmate’s sexual orientation.

Atty. Fleischner then explained that a number of countries do not allow solitary confinement for disciplinary reasons, with examples being Norway and South Africa. He then pointed out that solitary confinement is used less often internationally when compared to the United States mainly because the United States prison population is so large. For example, he mentioned that Britain imprisons individuals at about 30 percent the rate of United States. Additionally, he stated that Wales was an interesting case where solitary confinement was heavily used for members of the Irish Republican Army which was in place for a long time. Wales found the experience creating increased violence and recidivism, so Britain reformed solitary confinement around 2015. He noted that since the reform about 71 percent of solitary confinement placements lasted less than 14 days. However, he said this is a cautionary tale for the United States because while Britain created close supervision centers which were initially praised, over time these units looked the same as the old solitary confinement.

Atty. Fleischner then pointed to Canada as an interesting study. He explained how there was reform due to litigation, ultimately leading to two Supreme Court decisions in which they found the conditions of solitary confinement to have violated the Canadian Constitution. He noted that Parliament has reformed solitary confinement in response however, they did not adopt the Mandela 15-day rule. Next, Atty, Fleischner highlighted South Africa who eliminated the term of solitary confinement in 1998, replacing it with “segregation”. He noted that segregation was not to be used for discipline, no longer than 7 consecutive days, and required mandatory medical staff visits daily. However, he said the reality is not quite what the initial promise was as timelines are not uniformly obeyed, and the old conditions of solitary confinement continue. Atty. Fleischner concluded by noting that the subcommittee report will be reviewed by Atty. John Melander, and that the subcommittee will meet again to form recommendations to the full committee.

Deputy Commission Fallon asked if any United States jurisdiction had expanded the definition for serious mental illness or if it is unique to Massachusetts.

Dr. Henry replied that the Diagnostic and Statistical Manual of Mental Disorders (“DSM5”) does not have a definition of serious mental illness, and that it is defined in multiple ways. Her impression is that when examining the states reviewed by the subcommittee, New Jersey did not go as far as Massachusetts did when changing the definition.

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Atty. Fleischner replied that the definition most commonly used for serious mental illness was adopted from litigation, resulting from negotiations between experts. He noted that it generally started with the classification of depressive and personality disorders with functional impairment. He added that the definition was not identical but very close. He suspected that Massachusetts definition is broader than other states.

Atty. Tenneriello inquired about the HALT Act, asking the subcommittee to verify that anything over 17 hours per day is considered to be segregated confinement and that the legislature intended everyone to have 6 hours out of cell time per day. Atty. Fleischner relied in the affirmative.

Deputy Commissioner Fallon asked if the 6 hours out of the cell was in restraints. Atty. Fleischner replied that he was not sure and would research the question. Mr. Fallon then mentioned that he had previously visited Rikers Island’s youth unit that utilized restraint chairs for out of cell time. He added that there were yoga pads on the walls which instructors used to teach stretching techniques for yoga before and after use of the chairs. When he asked the staff how often the chairs were used, they said almost never. He concluded by stating the committee must be careful when looking at these policies to see if they are practical or if actually used by the facilities.

Atty. Tenneriello noted that practicability is an important point when looking at the Falcon Report recommendations. She noted that those recommendations require a large human resources investment, and this is an important conversation to continue moving forward.

Deputy Commissioner Fallon asked about the special management units used in New Jersey for substance abuse. More specifically, if they are forced or voluntary, and what happens if an inmate declines to participate?

Dr. Henry replied that she believed it is voluntary and the inmate would go to restrictive housing if they do not volunteer. She added that she doesn’t believe the unit is fully operational yet, and that there are more than 10 different iterations of these units. She explained that the units often have a shorter technical length of stay with a frequent use of restraints which allows the inmates to be out of cell. She believed that it is difficult to evaluate what is going on with all of the complicated details without the units being fully functioning. She noted that her opinion is that they over complicated it.

Deputy Commissioner Fallon added that the specialized units are not always what they report to be. He added that he attempted to look for stats from the reforms in Canada and data was difficult to acquire, which was alluded to for South Africa by the subcommittee. He stated that he has to make sure that the DOC can prove that they are actually doing what they claim to be.

Atty. Fleischner noted that he doesn’t disagree with that characterization. Although one area of difference is the degree of oversight and monitoring, with non-compliance being publicized.

Chairman Peck asked if Colorado used any type of administrative segregation.

Sean Medeiros replied that what would normally call for administrative segregation now goes to the custody control units. He added that when talking to the administrators they explained that there are specific things that need to occur for an inmate to be sent to this unit.

Chairman Peck stated that Colorado must have a more concise disciplinary system, to which Mr. Medeiros agreed, stating that it must be swifter than the one used by Massachusetts.

Atty. Fleischner concluded the conversation by stating that the subcommittee welcomes any comments through Chairman Peck, noting that those comments will be considered when finalizing the report.

**Lived Experience Participation**

Chairman Peck noted that the committee received three recommendations to serve on the lived experience panel. They are Jamelle, Romilda, and Dennis Everett. He recommended that all three be accepted, with their participation beginning next month. He noted that their roles still need to be determined and guidelines will be created for their participation. He then reminded the committee that the previous plan by the committee was to include their involvement going forward as a permanent agenda item, with thirty minutes slotted monthly. Chairman Peck then suggested that rather than slotting a thirty-minute period, the time should be as long as necessary. Additionally, this panel should be non-voting members of the committee with no involvement in board business. However, the panel should be able to communicate with committee members on all non-board business, possibly having a different topic focus each month.

Atty. Tenneriello stated that she believed the idea was to have the panel serve as consultants to the committee. Therefore, having the assigned time period reflects that role.

Dr. Henry added that she believes this will be a rich opportunity to enhance the committee and expressed a welcome to the new panel.

Chairman Peck asked the committee about setting parameters for the panel. Specifically, if the committee desired to have the panel participate in each part of agenda outside of board business.

The committee members unanimously agreed to Chairman Peck’s recommendation.

**Public Comment**

Mary Valerio (prepared statement submitted before meeting):

“I am very pleased to see the Committee discussing the idea of lived experience participation. This will greatly improve everyone’s understanding of solitary and it is a step in the right direction. By working together honestly and with full, accurate disclosure, good results are possible."

Lori Day submitted the following question via the chat function on Microsoft Teams:

“Do you know why "reformed" states/countries have not been able to fully implement the reforms? Lack of Staffing? Lack of training?”

Atty. Fleischner responded that it was not clear from the research although when looking at the monitoring reports, the common themes are staffing or training. He also stated that the procedures used to implement legislative changes are not always consistent with the legislative intent. He noted that he will look further into this issue.

Chairman Peck asked if there appeared to be an overall lack of commitment by the institutions to the legislative changes?

Dr. Henry responded that these concerns are not limited to solitary or restrictive housing. She added that there is always a disconnect from legislative intent to implementation. Generally, this is a common problem, and it may be due to a variety of reasons including resistance by the institutions or a lack of resources.

Atty. Fleischner added that New York may provide some answers once the new reforms are fully implemented. Canada may also provide answers as the Parliament did not go as far codifying the reforms as their Supreme Court wanted.

Sean Medeiros noted that Colorado appeared to pass restrictive housing reform on their own, not in response to previous or pending litigation. He added that it will be interesting to see how their Department of Correction responds to legislation that seeks to codify those reforms.

Chairman Peck asked how many prisoners were in the Colorado system for comparison to Massachusetts. Additionally, he inquired if the members believed that the size of the departments affect the implementation of legislative reforms.

Sean Medeiros responded that while he did not have the exact numbers in front of him, he believed it to be around 28,000. He agreed that the size of the organization makes a difference when it comes to implementation.

Joanne Barros added that Ohio has similar problems. She believed their system holds around 15,000 inmates, and concerns are valid regarding training, staffing, and capacity.

Laura Wagner stated that she appreciated the time in which the committee undertook to look into the various systems. She believed that Deputy Commissioner Fallon’s comments appear to be looking for perfection with the reforms. She noted that it is important to remember that solitary is torture and presents a danger to staff. Additionally, she stated that the current system is not working. She explained that she previously was a director of school with children with serious disabilities, and the old approach was to use physical restraints in a solitary room to manage behavior. This created a toxic environment and provided no access to appropriate care. Once the school reformed the process, the total number of cases went from 15-20 daily down to only a couple per year. She said that staff who were unwilling to change left, and the environment improved greatly. She concluded by stating that the status quo is not working, and that she appreciates the decision by the committee to include live experience participation.

Note: Howard D. Trachtman attempted to attend the meeting via the Microsoft Teams platform. However, after several attempts to admit his account, access was not granted due to an error in the Microsoft platform.

**Member Comment**:

Chairman Peck acknowledged Sean Medeiros for his upcoming retirement. He thanked Mr. Medeiros for his thirty years of service and for being a source of guidance to both the Chair and to the committee.

Mr. Medeiros thanked the committee for a wonderful experience, and stated that he believed that good work had been completed by the committee and will continue into the future.

**Adjourn**

Atty. Fleischner moved to adjourn the meeting. The motion was seconded by Sean Medeiros. All voted in favor. The meeting adjourned at 2:37PM.