

February 26, 2025

Chadwick S. Dotson, Director  
Virginia Department of Corrections  
P.O. Box 26963  
Richmond, VA 23261

Re: Red Onion State Prison

Dear Director Dotson:

We write to express serious concerns regarding the attached “Safety Agreement,” which we understand the Virginia Department of Corrections (“VDOC”) is requiring people incarcerated in certain units at Red Onion State Prison to sign. VDOC’s requirement that prisoners sign the agreement violates their constitutional and statutory rights, including their right to free expression, religious free exercise, and the Americans with Disabilities Act, in addition to being wholly counterproductive and contrary to appropriate correctional and mental health treatment practices.

As such, we demand that VDOC immediately revoke any punishments that have been meted out for violations of the agreement, restore power to the cells of individuals who have refused to sign the agreement, and refrain from any further retaliatory action against individuals for refusing to sign the agreement or against individuals who exhibit symptoms of mental illness.

### **Background**

We understand that in mid-January, Red Onion staff presented the Safety Agreement to all people in the Step-Down Program and other restorative housing units at Red Onion. Staff told prisoners that if they did not sign the agreement, the power to their cell outlets would be turned off. While many prisoners did sign the agreement, some did not, and shortly thereafter, the prison cut power to the cells of those who did not sign. For those who continue to refuse to sign the agreement, the power remains off in their cells to the present. This prevents these men from accessing educational, religious, and entertainment programming and materials through their televisions and tablets, and from being able to communicate with their loved ones through email.

VDOC has coerced incarcerated persons to agree with factually inaccurate statements in the agreement, including that they signed the agreement voluntarily, that they “have access to mental health and other local resources, including multiple forms of support,” that “facility staff is committed to [their] well-being,” and that “there are alternative coping strategies available to [the prisoner], including but not limited to stress management techniques, communication with support staff, and engaging in recreational or vocational activities.”

Even more concerning are the threats that if signees “violate this agreement by engaging in self-harm, or other risky behaviors, or refusing to cooperate with the safety protocols,” they may be subject to “additional monitoring and interventions.” The agreement does not specify what those interventions might be.



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The agreement further states that repeated violations can result in punitive consequences, including “loss of privileges, such as access to television, recreation time, or other amenities, as deemed necessary by facility staff to maintain safety and promote positive behavior.”

The terms of the agreement are so vague that they provide little guidance to prisoners regarding what behaviors violate the agreement and what consequences will ensue. As a result, it appears that people subject to this agreement could be found in violation and face consequences outside of the regular disciplinary process set out in agency operating procedures, presumably without affording prisoners the minimal due process protections that attach to formal disciplinary charges.

VDOC’s response to a media inquiry about the agreement was to assert that those people whose cells were powered down present “an immediate risk of self-harm.” But the facts belie this justification: VDOC has taken no action to assess or evaluate the mental health status of these individuals, has not provided any additional mental health treatment or support for them, and has not instituted any other precautions that would prevent incidents of self-harm. This allegation, then, can only be a pretext for coercing prisoners into signing the agreement by punishing those who refuse to sign it.

#### **VDOC’s actions are unlawful**

VDOC’s use of coercion and punishment to force prisoners to sign the Safety Agreement violates prisoners’ First Amendment right to freedom of speech by compelling them to espouse views they find objectionable or believe are false. *See, e.g., Janus v. Am. Fed’n of State, Cnty. & Mun. Employees, Council 31*, 585 U.S. 878, 891-93 (2018) (“Compelling individuals to mouth support for views they find objectionable violates [a] cardinal constitutional command.”).

Retaliating against people for exercising their First Amendment right to refuse to sign the agreement is also impermissible under the First Amendment. *See, e.g., Whitfield v. Spiller*, 76 F. 4th 698 (7th Cir. 2023) (prisoner’s refusal to sign a supervised release agreement was protected speech and punishment for refusing to sign constituted actionable retaliation).

And because prisoners in restorative housing do not have access to congregate religious services, and instead access religious programming on their in-cell televisions or tablets, shutting off power to their cells impermissibly burdens their free exercise of religion. 42 U.S.C. § 2000cc-1(a); *see Turner v. Safley*, 482 U.S. 78, 89 (1987).

Further, the failure to adequately treat prisoners exhibiting self-harming behavior as a result of mental illness, including threatening to punish or actually punishing them, likely violates the Eighth Amendment and the Americans with Disabilities Act. *See, e.g., Braggs v. Dunn*, 257 F. Supp. 3d 1171, 1221 (M.D. Ala. 2017); *Roberts v. Khounphixay*, No. C18-746 MJP, 2020 WL 6270822, at \*5 (W.D. Wash. Oct. 26, 2020); *Brown v. Washington Dep’t of Corr.*, No. C13-5367 RBL-JRC, 2015 WL 4039322, at \*11 (W.D. Wash. May 13, 2015), report and



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recommendation adopted, No. C13-05367 RBL, 2015 WL 4039270 (W.D. Wash. July 2, 2015).

Finally, VDOC's use of long-term solitary confinement in the Step-Down Program at Red Onion is already the subject of litigation, because the conditions prisoners are subjected to in that program violate their Eighth Amendment and Due Process rights. *See Thorpe et al. v. Virginia Dep't of Corrections et al.*, No. 2:20-cv-00007-JPJ-PMS (W.D. Va). VDOC is amplifying these violations by making these conditions harsher and more isolating for prisoners who simply refuse to sign a vague and coercive agreement.

### **VDOC's actions create additional mental health risks**

VDOC's actions around the Safety Agreement are not only illegal, but profoundly counterproductive and harmful. The scientific consensus among mental health professionals is that safety contracts are ineffective at preventing self-harm, and often do more harm than good. *See, e.g.,* Craig J. Bryan, Jim Mintz, et al., *Effect of crisis response planning vs. contracts for safety on suicide risk in U.S. Army Soldiers: A randomized clinical trial*, *Journal of Affective Disorders* 212 (2017) 64–72; David C. Rozek, Hannah Tyler, et al. (2022): *Suicide Intervention Practices: What Is Being Used by Mental Health Clinicians and Mental Health Allies?* *Archives of Suicide Research*, DOI: 10.1080/13811118.2022.2106923.

When such contracts include threats of punitive consequences, people become fearful of seeking treatment for mental health symptoms – including thoughts of self-harm – which leads to worsening mental health. This is especially true in this case, where the Safety Agreement is so vague regarding what constitutes a violation, or what consequences might be imposed. Even if people do seek mental health treatment, when they do so under the shadow of a safety contract, their relationship with mental health staff becomes transactional. Eroded trust makes effective treatment difficult or impossible.

These concerns are underscored by the fact that VDOC has responded to past incidents of self-harm with punitive measures, including disciplinary charges, imposing restitution obligations related to costs of medical care, and referral for criminal charges. This reflects a misguided and discriminatory belief that incidents of self-harm at Red Onion are not related to mental illness and should be addressed through punishment rather than treatment.

It is beyond dispute that the conditions of extreme social isolation present in the Step-Down Program and other restorative housing units pose a risk of psychological and emotional harm. Indeed, VDOC's own statistics reflect that nearly 80 percent of people in Level S and over 50 percent of people in restorative housing status have a diagnosed mental illness that requires treatment. Virginia Dept. Of Corrections, *Restorative Housing in the Virginia Department of Corrections: FY2024 Report* at 11. Thoughts of self-harm, as well as actual incidents of self-harm, occur much more frequently among people housed in these conditions. *See, e.g.,* Terry A. Kupers, M.D., M.S.P., *Repetitive Self-Harm in Solitary Confinement*, *Correctional Health Care Report*, Vol. 24, No. 3 (Summer 2023) 53-76.



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The most effective way to prevent incidents of self-harm among people living in intolerable conditions is to ameliorate the harshest conditions of confinement that result in extreme social isolation, and to provide adequate mental health care to the people in those units. Any incentives offered should be tied to the successful completion of classes, programs, and activities facilitated by trained and qualified staff.

But based on conversations with dozens of prisoners at Red Onion and VDOC personnel over the past several years, it is clear that there is insufficient staff to facilitate group or individual mental health and psycho-social programming, including therapy or counseling, and most people in restorative housing are not afforded the opportunity to participate in such treatment or programs.

Because VDOC appears unable or unwilling to provide adequate medical and mental health services for a population that has a disproportionately high rate of mental illness, while simultaneously subjecting that population to conditions known to negatively impact mental health, its decision to punish those who inevitably exhibit symptoms of severe mental distress is compounding harm upon harm.

#### **VDOC must take immediate steps to address ongoing and future harm**

Because the continued punishment of people who have refused to sign the Safety Agreement, and the past or future punishment of those whose mental health disabilities lead to thoughts or behaviors involving self-harm, are unlawful, we demand that VDOC immediately take the following actions:

- 1) Issue a written communication to Red Onion staff and everyone housed at Red Onion that incidents of self-harm will be treated as mental health crises, not disciplinary infractions, and will not result in the loss of privileges or other punishment.
- 2) Restore power to the cells of all individuals who have refused to sign the Safety Agreement.
- 3) Expunge any disciplinary charges and penalties imposed for any violations of the Safety Agreement.
- 4) Refrain from any form of retaliation against any person for refusing to sign the Safety Agreement, for communicating with counsel or the media about the Safety Agreement, or for exhibiting symptoms of mental illness.
- 5) Review its policies, procedures, and training to ensure that people in VDOC custody are not punished for exhibiting symptoms of mental illness, including expressing suicidal ideation and self-harming behavior.

We look forward to your response.

Sincerely,

/s/

Vishal Agraharkar, Senior Supervising Attorney

Geri Greenspan, Senior Staff Attorney



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## **Safety Agreement for Inmates**

This agreement is made between the undersigned inmate and the facility staff, with the purpose of ensuring your well-being and promoting your safety during your time in custody. The goal is to establish a clear understanding of the expectations and resources available to prevent self-harm and other risky behaviors. By signing this agreement, you are committing to your mental and emotional health while incarcerated and agreeing to actively engage in the safety protocols set forth by the facility.

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### **1. Acknowledgment of the Agreement:**

I, the undersigned, acknowledge that I have read, understand, and voluntarily agree to the following terms:

#### **1. Commitment to Safety:**

- I commit to refraining from any form of risky behavior, including but not limited to self-harm or any actions that could cause injury to myself or others.
- I understand that self-harm is dangerous, harmful, and not an acceptable method of coping with stress or difficult emotions.

#### **2. Access to Support Services:**

- I recognize that I have access to mental health and other local resources, including multiple forms of support, and I agree to utilize these services if I feel overwhelmed or in distress.
- I understand that I can reach out to facility staff for assistance or to request mental health services at any time.

#### **3. Immediate Reporting of Concerns:**

- I agree to immediately inform facility staff if I experience any thoughts or urges related to self-harm or if I feel unsafe in any way.
- I understand that the facility staff is committed to my well-being and will provide assistance to address any concerns I may have.

#### **4. Review Process:**

- This agreement will be reviewed every 30 days, at which time I will have the opportunity to discuss any concerns or adjustments related to my safety and mental health.
- If necessary, the agreement may be revised or updated during the review process to reflect changes in my mental health needs.

#### **5. Good Behavior Incentives:**

- I understand that if I remain free from self-harm and other risky behaviors for a continuous period, I will be eligible for an incentive for maintaining my commitment to safety and good behavior.

- 7 Day incentives (example: new movies and episodes of exclusive TV series)
- 30 Day incentives (example: opportunities for group rec and activities, sports)
- 45 Day incentives (example: free commissary bags)
- 90 Day incentives (example: special meals, fish fry)
- These incentives will be awarded only if I consistently demonstrate adherence to the terms of this agreement and exhibit positive behavior.

**6. Consequences of Violations:**

- I understand that if I violate this agreement by engaging in self-harm, other risky behaviors, or refusing to cooperate with the safety protocols, the facility may take appropriate actions to ensure my safety, including additional monitoring or interventions.
- I further understand that repeated violations of this agreement may result in the loss of privileges, such as access to television, recreation time, or other amenities, as deemed necessary by facility staff to maintain safety and promote positive behavior.

**7. Acknowledgment of Alternatives:**

- I am aware that there are alternative coping strategies available to me, including but not limited to stress management techniques, communication with support staff, and engaging in recreational or vocational activities.

**2. Inmate's Declaration:**

By signing below, I confirm that I voluntarily agree to this Safety Agreement. I understand the importance of this agreement and will make a good faith effort to follow the outlined guidelines. I also acknowledge that I have been informed of my right to seek mental health and other services at any time.

**Inmate Name/Number (Printed):** \_\_\_\_\_

**Inmate Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**3. Facility Staff Acknowledgment:**

By signing below, I acknowledge that I have explained the terms of this agreement to the inmate, and I will ensure that the inmate receives the necessary resources and support outlined in this document.

**Staff Name/Position (Printed):** \_\_\_\_\_

**Staff Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**4. Review Date:**

The next review of this agreement will take place on:

**Next Review Date:** \_\_\_\_\_