

[First Reprint]

**ASSEMBLY, No. 547**

**STATE OF NEW JERSEY**  
**217th LEGISLATURE**

PRE-FILED FOR INTRODUCTION IN THE 2016 SESSION

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**SYNOPSIS**

Restricts use of isolated confinement in correctional facilities.

**CURRENT VERSION OF TEXT**

As reported by the Assembly Law and Public Safety Committee on September 22, 2016, with amendments.



**(Sponsorship Updated As Of: 10/21/2016)**

1 AN ACT concerning restrictions on isolated confinement in  
2 correctional facilities and supplementing Title 30 of the Revised  
3 Statutes.

4  
5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:

7  
8 1. This act shall be known and may be cited as the “Isolated  
9 Confinement Restriction Act.”

10  
11 2. The Legislature finds and declares that:

12 a. The use of isolated confinement in this State’s correctional  
13 facilities should be restricted to ensure the safe and humane  
14 operation of these facilities, consistent with the New Jersey  
15 Constitution, the laws and public policies of this State, the mission  
16 of the correctional system, evolving medical knowledge, and human  
17 rights standards of decency.

18 b. Isolated confinement should only be used when necessary,  
19 and should not be used against vulnerable populations or under  
20 conditions or for time periods that foster psychological trauma,  
21 psychiatric disorders, or serious, long-term damage to an isolated  
22 person’s brain.

23 c. The standards established in this act should apply to all  
24 persons detained in correctional facilities under the jurisdiction of  
25 this State or any subdivision, regardless of the civil or criminal  
26 nature of the charges against them.

27 <sup>1</sup>d. Citing the devastating and lasting psychological  
28 consequences of solitary confinement on persons detained in  
29 correctional facilities, President Obama recently adopted reforms to  
30 reduce its use in federal correctional facilities, including banning  
31 restrictive housing for low-level offenders and juveniles; decreasing  
32 the maximum length of time an inmate may be held in restricted  
33 housing from 365 days to 60 days; and increasing time spent  
34 outside the cell for inmates held in restrictive housing.<sup>1</sup>

35  
36 3. For the purposes of this act:

37 “Clinician” means a State licensed physician, except if the  
38 clinician makes mental health evaluations, the term shall mean a  
39 State licensed psychiatrist or psychologist, or an advanced practice  
40 nurse or clinical nurse specialist with a specialty in psychiatric  
41 nursing.

42 “Commissioner” means the Commissioner of Corrections.

43 “Correctional facility” means any State correctional facility or  
44 county correctional facility, and any State, county, or private

**EXPLANATION** – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Assembly ALP committee amendments adopted September 22, 2016.

1 facility detaining persons pursuant to any intergovernmental service  
2 agreement or other contract with any State, county, or federal  
3 agency, including, but not limited to, United States Immigration and  
4 Customs Enforcement.

5 "County correctional facility" means a county jail, penitentiary,  
6 prison, or workhouse.

7 "Emergency confinement" means the isolated confinement of an  
8 inmate in a correctional facility when there is reasonable cause to  
9 believe that this confinement is necessary for reducing a substantial  
10 risk of imminent serious harm to the inmate or others <sup>1</sup>, as  
11 evidenced by recent conduct<sup>1</sup>.

12 "Facility administrator" or "administrator" means the chief  
13 operating officer or senior administrative designee of a correctional  
14 facility.

15 "Inmate" means a person confined in a correctional facility.

16 "Isolated confinement" means confinement of an inmate in a  
17 correctional facility, pursuant to disciplinary, administrative,  
18 protective, investigative, medical, or other classification, in a cell or  
19 similarly confined holding or living space, alone or with other  
20 inmates, for approximately 20 hours or more per day, with severely  
21 restricted activity, movement, and social interaction.

22 "Less restrictive intervention" means a placement or conditions  
23 of confinement, or both, in the current or an alternative correctional  
24 facility, under conditions less restrictive of an inmate's movement,  
25 privileges, activities, or social interactions.

26 "Medical isolation" means isolated confinement of an inmate for  
27 medical reasons, including a mental health emergency or when  
28 necessary for preventing the spread of a communicable disease.

29 <sup>1</sup>"Medical staff" means State licensed psychiatrists, physician  
30 assistants, advanced practice nurses or clinical nurse specialists or,  
31 for mental health evaluations or decisions, those nurses with a  
32 specialty in psychiatric nursing, or comparably credentialed  
33 employees or contractors employed to provide healthcare.<sup>1</sup>

34 "Member of a vulnerable population" means any inmate who:

- 35 a. is 21 years of age or younger;
- 36 b. is <sup>1</sup>~~55~~ 65<sup>1</sup> years of age or older;
- 37 c. has a disability based on a mental illness, as defined in  
38 subsection r. of section 2 of P.L.1987, c.116 (C.30:4-27.2), a history  
39 of psychiatric hospitalization, or has recently exhibited conduct,  
40 including but not limited to serious self-mutilation, indicating the  
41 need for further observation or evaluation to determine the presence  
42 of mental illness;
- 43 d. has a developmental disability, as defined in subsection b. of  
44 section 3 of P.L.1985, c.145 (C.30:6D-25);
- 45 e. has a serious medical condition which cannot effectively be  
46 treated in isolated confinement;

- 1 f. is pregnant<sup>1</sup>, is in the postpartum period, or has recently  
2 suffered a miscarriage or terminated a pregnancy<sup>1</sup>; <sup>1</sup>[or]<sup>1</sup>  
3 g. has a significant auditory or visual impairment<sup>1</sup>; or  
4 h. is perceived to be lesbian, gay, bisexual, transgender, or  
5 intersex<sup>1</sup>.

6 “Protective custody” means confinement of an inmate in a cell or  
7 similarly confined holding or living space, under conditions  
8 necessary to protect the inmate or others.

9 "State correctional facility" means a State prison or other penal  
10 institution or an institution or facility designated by the  
11 commissioner as a place of confinement under section 2 of  
12 P.L.1969, c.22. (C.30:4-91.2)<sup>1</sup>.

13

14 4. a. The use of isolated confinement in correctional facilities in  
15 this State shall be restricted as follows:

16 (1) Except as otherwise provided in paragraphs (1), (3), and (4)  
17 of subsection d. of this section, an inmate shall not be placed in  
18 isolated confinement unless there is reasonable cause to believe that  
19 the inmate would create a substantial risk of immediate serious  
20 harm to himself or another, as evidenced by recent threats or  
21 conduct,<sup>1</sup> and a less restrictive intervention would be insufficient to  
22 reduce this risk. Except as otherwise provided in paragraphs (1),  
23 (3), and (4) of subsection d. of this section, the correctional facility  
24 shall bear the burden of establishing this standard by clear and  
25 convincing evidence<sup>1</sup>.

26 (2) Except as otherwise provided in paragraphs (1), (3), and (4)  
27 of subsection d. of this section, an inmate shall not be placed in  
28 isolated confinement for non-disciplinary reasons.

29 (3) Except as otherwise provided in paragraph (1) of subsection  
30 d. of this section, an inmate shall not be placed in isolated  
31 confinement before receiving a personal and comprehensive  
32 medical and mental health examination conducted by a clinician<sup>1</sup>;  
33 however, in a county correctional facility, a preliminary  
34 examination shall be conducted by a member of the medical staff  
35 within 12 hours of confinement and the clinical examination shall  
36 be conducted within 48 hours of confinement<sup>1</sup>.

37 (4) Except as otherwise provided in paragraph (1) of subsection  
38 d. of this section, an inmate shall only be held in isolated  
39 confinement pursuant to initial procedures and reviews which  
40 provide timely, fair and meaningful opportunities for the inmate to  
41 contest the confinement. These procedures shall include the right to  
42 an initial hearing within 72 hours of placement and a review every  
43 15 days thereafter, in the absence of exceptional circumstances,  
44 unavoidable delays, or reasonable postponements; the right to  
45 appear at the hearing<sup>1</sup>[.]<sup>1</sup> the right to be represented at the

1 hearing<sup>1</sup> [ ] ;<sup>1</sup> an independent hearing officer<sup>1</sup> [ ] ;<sup>1</sup> and a written  
2 statement of reasons for the decision made at the hearing.

3 (5) Except as otherwise provided in paragraph (3) of subsection  
4 d. of this section, the final decision to place an inmate in isolated  
5 confinement shall be made by the facility administrator.

6 (6) Except as otherwise provided in paragraph (7) of subsection  
7 a. of this section and paragraph (3) of subsection d. of this section,  
8 an inmate shall not be placed or retained in isolated confinement if  
9 the facility administrator determines that the inmate no longer  
10 meets the standard for the confinement.

11 (7) A clinician shall evaluate each inmate placed in isolated  
12 confinement on a daily basis <sup>1</sup>, in a confidential setting outside of  
13 the cell whenever possible.<sup>1</sup> to determine whether the inmate is a  
14 member of a vulnerable population <sup>1</sup>; however, in a county  
15 correctional facility, an inmate in isolated confinement shall be  
16 evaluated by a member of the medical staff as frequently as  
17 clinically indicated, but at least once a week<sup>1</sup>. Except as otherwise  
18 provided in subsection d. of this section, an inmate determined to be  
19 a member of a vulnerable population shall be immediately removed  
20 from isolated confinement and moved to an appropriate placement.

21 (8) A disciplinary sanction of isolated confinement which has  
22 been imposed on an inmate who is removed from isolated  
23 confinement pursuant to paragraph (7) of subsection a. of this  
24 section shall be deemed to be satisfied.

25 (9) Except as otherwise provided in paragraph (1) of subsection  
26 d. of this section during a facility-wide lock down, an inmate shall  
27 not be placed in isolated confinement for more than 15 consecutive  
28 days, or for more than 20 days during any 60-day period.

29 (10) Cells or other holding or living space used for isolated  
30 confinement are to be properly ventilated, lit, temperature-  
31 controlled, clean, and equipped with properly functioning sanitary  
32 fixtures.

33 <sup>1</sup>(11) A correctional facility shall maximize the amount of time  
34 that an inmate held in isolated confinement spends outside of the  
35 cell by providing, as appropriate, access to recreation, education,  
36 clinically appropriate treatment therapies, skill-building activities,  
37 and social interaction with staff and other inmates.

38 (12) An inmate held in isolated confinement shall not be denied  
39 access to food, water, or any other basic necessity.

40 (13) An inmate held in isolated confinement shall not be denied  
41 access to appropriate medical care, including emergency medical  
42 care.

43 (14) An inmate shall not be directly released from isolated  
44 confinement to the community during the final 180 days of the  
45 inmate's term of incarceration, unless it is necessary for the safety  
46 of the inmate, staff, other inmates, or the public.<sup>1</sup>

1 b. Except as otherwise provided in subsection d. of this section,  
2 an inmate who is a member of a vulnerable population shall not be  
3 placed in isolated confinement.

4 (1) ~~1[A person]~~ An inmate<sup>1</sup> who is a member of a vulnerable  
5 population because the ~~1[person]~~ inmate<sup>1</sup> is 21 years of age or  
6 younger, has a disability based on mental illness, or has a  
7 developmental disability:

8 (a) shall not be subject to discipline for refusing treatment or  
9 medication, or for self-harming or related conduct or threats of this  
10 conduct; and

11 (b) who would otherwise be placed in isolated confinement shall  
12 ~~1[alternately]~~ be screened by a correctional facility clinician or the  
13 appropriate screening service pursuant to the New Jersey  
14 Administrative Code and, if found to meet the standards of civil  
15 commitment, shall<sup>1</sup> be placed in a specialized unit, as designated by  
16 the commissioner, or ~~1[be]~~<sup>1</sup> civilly ~~1[admitted or]~~<sup>1</sup> committed to  
17 ~~1[an]~~ the least restrictive<sup>1</sup> appropriate short term care or  
18 psychiatric<sup>1</sup> facility designated by the Department of Human  
19 Services.

20 (2) ~~1[A person]~~ An inmate<sup>1</sup> who is a member of a vulnerable  
21 population because the ~~1[person]~~ inmate<sup>1</sup> is ~~1[55]~~ 65<sup>1</sup> years of age  
22 or older, has a serious medical condition which cannot be  
23 effectively treated in isolated confinement, or is pregnant <sup>1</sup>, is in the  
24 postpartum period, or has recently suffered a miscarriage or  
25 terminated a pregnancy,<sup>1</sup> who would otherwise be placed in isolated  
26 confinement <sup>1</sup>,<sup>1</sup> shall alternately be placed in an appropriate  
27 medical or other unit ~~1[,]~~<sup>1</sup> as designated by the commissioner.  
28 The requirements contained in this subsection shall not apply to a  
29 county correctional facility.<sup>1</sup>

30 c. An inmate shall not be placed in isolated confinement or in  
31 any other cell or other holding or living space, in any facility, with  
32 one or more inmates if there is reasonable cause to believe that  
33 there is a risk of harm or harassment, intimidation, extortion, or  
34 other physical or emotional abuse to that inmate or another inmate  
35 in that placement.

36 d. Isolated confinement shall be permitted under limited  
37 circumstances as follows:

38 (1) The facility administrator determines that a facility-wide lock  
39 down is required to ensure the safety of inmates in the facility until  
40 the administrator determines that these circumstances no longer  
41 exist. The facility administrator shall document specific reasons  
42 why any lockdown is necessary for more than 24 hours, and why  
43 less restrictive interventions are insufficient to accomplish the  
44 facility's safety goals. Within six hours of a decision to extend a  
45 lockdown beyond 24 hours, the commissioner shall publish the  
46 reasons on the Department of Corrections website and provide

1 meaningful notice of the reasons for the lockdown to the  
2 Legislature.

3 (2) The facility administrator determines that an inmate should  
4 be placed in emergency confinement **1[.]**, provided that:<sup>1</sup>

5 (a) **1[An] an**<sup>1</sup> inmate shall not be held in emergency  
6 confinement for more than 24 hours; and

7 (b) **1[An] an**<sup>1</sup> inmate held in emergency confinement shall  
8 receive an initial medical and mental health evaluation within two  
9 hours **1[.]**<sup>1</sup> and a personal and comprehensive medical and mental  
10 health evaluation within 24 hours <sup>1</sup>; however, in a county  
11 correctional facility, a preliminary examination shall be conducted  
12 by a member of the medical staff within 12 hours of confinement  
13 and the comprehensive medical and mental health evaluation within  
14 48 hours<sup>1</sup>. Reports of these evaluations shall be immediately  
15 provided to the facility administrator.

16 (3) A physician, based on a personal examination, determines  
17 that an inmate should be placed or retained in medical isolation.

18 The decision to place and retain an inmate in medical isolation  
19 due to a mental health emergency shall be made by a clinician based  
20 on a personal examination. In any case of isolation under this  
21 paragraph, a clinical review shall be conducted at least every six  
22 hours and as indicated. An inmate in medical isolation pursuant to  
23 this paragraph shall be placed in a mental health unit as designated  
24 by the commissioner. 1In the case of a county correctional facility,  
25 a decision to place an inmate in medical isolation shall be made by  
26 a member of the medical staff and be based on a personal  
27 examination; clinical reviews shall be conducted within 48 hours  
28 and then as clinically indicated.<sup>1</sup>

29 (4) The facility administrator determines that an inmate should  
30 be placed in protective custody as follows:

31 (a) The inmate may be placed in voluntary protective custody  
32 only with informed, voluntary, written consent and when there is  
33 reasonable cause to believe that confinement is necessary to prevent  
34 reasonably foreseeable harm. When an inmate makes an informed  
35 voluntary written request for protective custody, the correctional  
36 facility shall bear the burden of establishing a basis for refusing the  
37 request.

38 (b) The inmate may be placed in involuntary protective custody  
39 only when there is clear and convincing evidence that confinement  
40 is necessary to prevent reasonably foreseeable harm and that **1[no]**  
41 **a**<sup>1</sup> less restrictive 1intervention<sup>1</sup> would 1not<sup>1</sup> be sufficient to prevent  
42 **1[such] the**<sup>1</sup> harm.

43 (c) An inmate placed in protective custody shall receive  
44 comparable opportunities for activities, movement, and social  
45 interaction, consistent with their safety and the safety of others, as  
46 are inmates in the general population of the facility.

1 (d) An inmate subject to removal from protective custody shall  
2 be provided with a timely, fair, and meaningful opportunity to  
3 contest the removal.

4 (e) An inmate who may be placed or currently is in voluntary  
5 protective custody may opt out of that status by providing informed,  
6 voluntary, written refusal of that status.

7 <sup>1</sup>(f) The facility administrator shall place an inmate in a less  
8 restrictive intervention, including transfer to the general population  
9 of another institution or to a special-purpose housing unit for  
10 inmates who face similar threats, before placing the inmate in  
11 isolated confinement for protection unless the inmate poses an  
12 extraordinary security risk so great that transferring the inmate  
13 would be insufficient to ensure the inmate's safety.<sup>1</sup>

14 (5) A member of a vulnerable population shall not be placed in  
15 isolated confinement with one or more inmates, except with the  
16 inmate's informed, voluntary, written consent.

17

18 <sup>1</sup>5. a. An inmate shall not be placed in isolated confinement  
19 pending investigation of a disciplinary offense unless:

20 (1) the inmate's presence in the general population poses a  
21 danger to the inmate, staff, other inmates, or the public. In making  
22 this determination, the facility administrator shall consider the  
23 seriousness of the alleged offense, including whether the offense  
24 involved violence or escape or posed a threat to institutional safety  
25 by encouraging others to engage in misconduct; or

26 (2) the facility administrator has granted approval in an  
27 emergency situation.

28 b. An inmate's placement in isolated confinement pending  
29 investigation of a disciplinary offense shall be reviewed within 24  
30 hours by a supervisory employee who was not involved in the initial  
31 placement decision.

32 c. An inmate who has been placed in isolated confinement  
33 pending investigation of a disciplinary offense shall be considered  
34 for release to the general population if the inmate demonstrates  
35 good behavior while confined. If the inmate is found guilty of the  
36 disciplinary offense, the inmate's good behavior shall be considered  
37 in determining the appropriate penalty.<sup>1</sup>

38

39 <sup>1</sup>[5.] <sup>6.</sup><sup>1</sup> <sup>1</sup>[Within] Not less than<sup>1</sup> 90 days <sup>1</sup>[of] before<sup>1</sup> the  
40 effective date of this act, the commissioner shall:

41 a. develop policies and implement procedures for the review  
42 of inmates placed in isolated confinement and submit proposed  
43 regulations for promulgation as required by section <sup>1</sup>[6] <sup>7</sup><sup>1</sup> of this  
44 act;

45 b. initiate a review of each inmate placed in isolated  
46 confinement pursuant to the policies and procedures developed and  
47 implemented under subsection a. of this section; and



1 c. develop a plan for providing step-down and transitional  
2 units, programs, and staffing patterns to accommodate inmates  
3 currently placed in isolated confinement <sup>1</sup>, inmates who will be  
4 placed in isolated confinement, and inmates who receive an  
5 intermediate sanction in lieu of being placed in isolated  
6 confinement. Staffing patterns for correctional and program staff  
7 shall be set at levels necessary to ensure the safety of staff and  
8 inmates under the provisions of this act<sup>1</sup> .  
9

10 <sup>1</sup>~~6~~ 7<sup>1</sup>. In accordance with the "Administrative Procedure Act,"  
11 P.L.1968, c.410 (C.52:14B-1 et seq.), the commissioner shall  
12 promulgate regulations to effectuate the provisions of this act. The  
13 regulations shall include but not be limited to:

14 a. <sup>1</sup>~~Establishing~~ establishing<sup>1</sup> less restrictive interventions to  
15 isolated confinement, including separation from other inmates;  
16 transfer to other correctional facilities; and any non-isolated  
17 confinement sanction authorized by Department of Corrections  
18 regulations; restrictions on religious, mail, and telephone privileges,  
19 visit contacts, or outdoor and recreation access shall only be  
20 imposed as is necessary for the safety of the inmate or others, but  
21 shall not restrict access to food, basic necessities, or legal access;

22 b. <sup>1</sup>~~Requiring~~ requiring<sup>1</sup> training of disciplinary staff and all  
23 staff working with inmates in isolated confinement and requiring  
24 that this training include:

25 (1) assistance from appropriate professionals <sup>1</sup>including, but not  
26 limited to, professionals<sup>1</sup> in the Department of Human Services to  
27 periodically train all staff working with inmates in isolated  
28 confinement; <sup>1</sup>~~and~~<sup>1</sup>

29 (2) standards for isolated confinement, <sup>1</sup>including that it shall be  
30 limited to when an inmate commits an offense involving violence,  
31 escapes or attempts to escape, or poses a threat to institutional  
32 safety; that the maximum penalties for each offense shall be based  
33 on the seriousness of the offense; and available less restrictive  
34 interventions; and

35 (3)<sup>1</sup> the identification of developmental disabilities, and the  
36 symptoms of mental illness, including trauma disorders, and  
37 methods of safe responses to people in distress;

38 c. <sup>1</sup>~~Requiring~~ requiring<sup>1</sup> documentation of all decisions,  
39 procedures, and reviews of inmates placed in isolated confinement;

40 d. <sup>1</sup>~~Requiring~~ requiring<sup>1</sup> monitoring of compliance with all  
41 rules governing cells, units, and other places where inmates are  
42 placed in isolated confinement;

43 e. <sup>1</sup>~~Requiring~~ requiring<sup>1</sup> posting on the official website of  
44 the Department of Corrections of quarterly reports on the use of  
45 isolated confinement, by age, sex, gender identity, ethnicity,  
46 incidence of mental illness, and type of confinement status, at each

1 facility <sup>1</sup>, including a county correctional facility<sup>1</sup> ; these reports  
2 shall include the population on the last day of each quarter and a  
3 non-duplicative cumulative count of people exposed to isolated  
4 confinement for each fiscal year. These inmate reports also shall  
5 include the incidence of emergency confinement, self-harm, suicide,  
6 and assault in any isolated confinement unit, as well as explanations  
7 for each instance of facility-wide lockdown. These reports shall not  
8 include personally identifiable information regarding any inmate <sup>1</sup>;  
9 and

10 f. modifying the New Jersey Administrative Code for  
11 consistency with the provisions of this act and to require  
12 appropriate alternative placements for vulnerable populations in  
13 county correctional facilities<sup>1</sup>.

14  
15 <sup>1</sup>~~[7.]~~ 8.<sup>1</sup> This act shall take effect on the first day of the  
16 thirteenth month next following enactment, except the  
17 commissioner may take any anticipatory administrative action in  
18 advance as shall be necessary for the implementation of this act.