

ASSEMBLY, No. 314

STATE OF NEW JERSEY

218th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

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Assemblywomen McKnight, Lampitt, Jimenez, Assemblymen McKeon,

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SYNOPSIS

Restricts use of isolated confinement in correctional facilities.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



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 d. Citing the devastating and lasting psychological consequences
28 of solitary confinement on persons detained in correctional
29 facilities, President Obama recently adopted reforms to reduce its
30 use in federal correctional facilities, including banning restrictive
31 housing for low-level offenders and juveniles; decreasing the
32 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.

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
45 facility detaining persons pursuant to any intergovernmental service
46 agreement or other contract with any State, county, or federal
47 agency, including, but not limited to, United States Immigration and
48 Customs Enforcement.

1 "County correctional facility" means a county jail, penitentiary,
2 prison, or workhouse.

3 "Emergency confinement" means the isolated confinement of an
4 inmate in a correctional facility when there is reasonable cause to
5 believe that this confinement is necessary for reducing a substantial
6 risk of imminent serious harm to the inmate or others, as evidenced
7 by recent conduct.

8 "Facility administrator" or "administrator" means the chief
9 operating officer or senior administrative designee of a correctional
10 facility.

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

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

18 "Less restrictive intervention" means a placement or conditions
19 of confinement, or both, in the current or an alternative correctional
20 facility, under conditions less restrictive of an inmate's movement,
21 privileges, activities, or social interactions.

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

25 "Medical staff" means State licensed psychiatrists, physician
26 assistants, advanced practice nurses or clinical nurse specialists or,
27 for mental health evaluations or decisions, those nurses with a
28 specialty in psychiatric nursing, or comparably credentialed
29 employees or contractors employed to provide healthcare.

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

- 31 a. is 21 years of age or younger;
- 32 b. is 65 years of age or older;
- 33 c. has a disability based on a mental illness, as defined in
34 subsection r. of section 2 of P.L.1987, c.116 (C.30:4-27.2), a history
35 of psychiatric hospitalization, or has recently exhibited conduct,
36 including but not limited to serious self-mutilation, indicating the
37 need for further observation or evaluation to determine the presence
38 of mental illness;
- 39 d. has a developmental disability, as defined in subsection b. of
40 section 3 of P.L.1985, c.145 (C.30:6D-25);
- 41 e. has a serious medical condition which cannot effectively be
42 treated in isolated confinement;
- 43 f. is pregnant, is in the postpartum period, or has recently
44 suffered a miscarriage or terminated a pregnancy;
- 45 g. has a significant auditory or visual impairment; or
- 46 h. is perceived to be lesbian, gay, bisexual, transgender, or
47 intersex.

1 "Protective custody" means confinement of an inmate in a cell or
2 similarly confined holding or living space, under conditions
3 necessary to protect the inmate or others.

4 "State correctional facility" means a State prison or other penal
5 institution or an institution or facility designated by the
6 commissioner as a place of confinement under section 2 of
7 P.L.1969, c.22. (C.30:4-91.2).

8

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

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

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

24 (3) Except as otherwise provided in paragraph (1) of subsection
25 d. of this section, an inmate shall not be placed in isolated
26 confinement before receiving a personal and comprehensive
27 medical and mental health examination conducted by a clinician;
28 however, in a county correctional facility, a preliminary
29 examination shall be conducted by a member of the medical staff
30 within 12 hours of confinement and the clinical examination shall
31 be conducted within 48 hours of confinement.

32 (4) Except as otherwise provided in paragraph (1) of subsection
33 d. of this section, an inmate shall only be held in isolated
34 confinement pursuant to initial procedures and reviews which
35 provide timely, fair and meaningful opportunities for the inmate to
36 contest the confinement. These procedures shall include the right to
37 an initial hearing within 72 hours of placement and a review every
38 15 days thereafter, in the absence of exceptional circumstances,
39 unavoidable delays, or reasonable postponements; the right to
40 appear at the hearing; the right to be represented at the hearing; an
41 independent hearing officer; and a written statement of reasons for
42 the decision made at the hearing.

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

46 (6) Except as otherwise provided in paragraph (7) of subsection
47 a. of this section and paragraph (3) of subsection d. of this section,
48 an inmate shall not be placed or retained in isolated confinement if

1 the facility administrator determines that the inmate no longer
2 meets the standard for the confinement.

3 (7) A clinician shall evaluate each inmate placed in isolated
4 confinement on a daily basis, in a confidential setting outside of the
5 cell whenever possible, to determine whether the inmate is a
6 member of a vulnerable population; however, in a county
7 correctional facility, an inmate in isolated confinement shall be
8 evaluated by a member of the medical staff as frequently as
9 clinically indicated, but at least once a week. Except as otherwise
10 provided in subsection d. of this section, an inmate determined to be
11 a member of a vulnerable population shall be immediately removed
12 from isolated confinement and moved to an appropriate placement.

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

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

21 (10) Cells or other holding or living space used for isolated
22 confinement are to be properly ventilated, lit, temperature-
23 controlled, clean, and equipped with properly functioning sanitary
24 fixtures.

25 (11) A correctional facility shall maximize the amount of time
26 that an inmate held in isolated confinement spends outside of the
27 cell by providing, as appropriate, access to recreation, education,
28 clinically appropriate treatment therapies, skill-building activities,
29 and social interaction with staff and other inmates.

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

32 (13) An inmate held in isolated confinement shall not be denied
33 access to appropriate medical care, including emergency medical
34 care.

35 (14) An inmate shall not be directly released from isolated
36 confinement to the community during the final 180 days of the
37 inmate's term of incarceration, unless it is necessary for the safety
38 of the inmate, staff, other inmates, or the public.

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

42 (1) An inmate who is a member of a vulnerable population
43 because the inmate is 21 years of age or younger, has a disability
44 based on mental illness, or has a developmental disability:

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

1 (b) who would otherwise be placed in isolated confinement shall
2 be screened by a correctional facility clinician or the appropriate
3 screening service pursuant to the New Jersey Administrative Code
4 and, if found to meet the standards of civil commitment, shall be
5 placed in a specialized unit, as designated by the commissioner, or
6 civilly committed to the least restrictive appropriate short term care
7 or psychiatric facility designated by the Department of Human
8 Services.

9 (2) An inmate who is a member of a vulnerable population
10 because the inmate is 65 years of age or older, has a serious medical
11 condition which cannot be effectively treated in isolated
12 confinement, or is pregnant, is in the postpartum period, or has
13 recently suffered a miscarriage or terminated a pregnancy, who
14 would otherwise be placed in isolated confinement, shall alternately
15 be placed in an appropriate medical or other unit as designated by
16 the commissioner. The requirements contained in this subsection
17 shall not apply to a county correctional facility.

18 c. An inmate shall not be placed in isolated confinement or in
19 any other cell or other holding or living space, in any facility, with
20 one or more inmates if there is reasonable cause to believe that
21 there is a risk of harm or harassment, intimidation, extortion, or
22 other physical or emotional abuse to that inmate or another inmate
23 in that placement.

24 d. Isolated confinement shall be permitted under limited
25 circumstances as follows:

26 (1) The facility administrator determines that a facility-wide lock
27 down is required to ensure the safety of inmates in the facility until
28 the administrator determines that these circumstances no longer
29 exist. The facility administrator shall document specific reasons
30 why any lockdown is necessary for more than 24 hours, and why
31 less restrictive interventions are insufficient to accomplish the
32 facility's safety goals. Within six hours of a decision to extend a
33 lockdown beyond 24 hours, the commissioner shall publish the
34 reasons on the Department of Corrections website and provide
35 meaningful notice of the reasons for the lockdown to the
36 Legislature.

37 (2) The facility administrator determines that an inmate should
38 be placed in emergency confinement, provided that:

39 (a) an inmate shall not be held in emergency confinement for
40 more than 24 hours; and

41 (b) an inmate held in emergency confinement shall receive an
42 initial medical and mental health evaluation within two hours and a
43 personal and comprehensive medical and mental health evaluation
44 within 24 hours; however, in a county correctional facility, a
45 preliminary examination shall be conducted by a member of the
46 medical staff within 12 hours of confinement and the
47 comprehensive medical and mental health evaluation within 48

1 hours. Reports of these evaluations shall be immediately provided
2 to the facility administrator.

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

5 The decision to place and retain an inmate in medical isolation
6 due to a mental health emergency shall be made by a clinician based
7 on a personal examination. In any case of isolation under this
8 paragraph, a clinical review shall be conducted at least every six
9 hours and as indicated. An inmate in medical isolation pursuant to
10 this paragraph shall be placed in a mental health unit as designated
11 by the commissioner. In the case of a county correctional facility, a
12 decision to place an inmate in medical isolation shall be made by a
13 member of the medical staff and be based on a personal
14 examination; clinical reviews shall be conducted within 48 hours
15 and then as clinically indicated.

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

18 (a) The inmate may be placed in voluntary protective custody
19 only with informed, voluntary, written consent and when there is
20 reasonable cause to believe that confinement is necessary to prevent
21 reasonably foreseeable harm. When an inmate makes an informed
22 voluntary written request for protective custody, the correctional
23 facility shall bear the burden of establishing a basis for refusing the
24 request.

25 (b) The inmate may be placed in involuntary protective custody
26 only when there is clear and convincing evidence that confinement
27 is necessary to prevent reasonably foreseeable harm and that a less
28 restrictive intervention would not be sufficient to prevent the harm.

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

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

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

39 (f) The facility administrator shall place an inmate in a less
40 restrictive intervention, including transfer to the general population
41 of another institution or to a special-purpose housing unit for
42 inmates who face similar threats, before placing the inmate in
43 isolated confinement for protection unless the inmate poses an
44 extraordinary security risk so great that transferring the inmate
45 would be insufficient to ensure the inmate's safety.

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

1 5. a. An inmate shall not be placed in isolated confinement
2 pending investigation of a disciplinary offense unless:

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

9 (2) the facility administrator has granted approval in an
10 emergency situation.

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

15 c. An inmate who has been placed in isolated confinement
16 pending investigation of a disciplinary offense shall be considered
17 for release to the general population if the inmate demonstrates
18 good behavior while confined. If the inmate is found guilty of the
19 disciplinary offense, the inmate's good behavior shall be considered
20 in determining the appropriate penalty.

21

22 6. Not less than 90 days before the effective date of this act, the
23 commissioner shall:

24 a. develop policies and implement procedures for the review
25 of inmates placed in isolated confinement and submit proposed
26 regulations for promulgation as required by section 7 of this act;

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

30 c. develop a plan for providing step-down and transitional
31 units, programs, and staffing patterns to accommodate inmates
32 currently placed in isolated confinement, inmates who will be
33 placed in isolated confinement, and inmates who receive an
34 intermediate sanction in lieu of being placed in isolated
35 confinement. Staffing patterns for correctional and program staff
36 shall be set at levels necessary to ensure the safety of staff and
37 inmates under the provisions of this act.

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39 7. In accordance with the "Administrative Procedure Act,"
40 P.L.1968, c.410 (C.52:14B-1 et seq.), the commissioner shall
41 promulgate regulations to effectuate the provisions of this act. The
42 regulations shall include but not be limited to:

43 a. establishing less restrictive interventions to isolated
44 confinement, including separation from other inmates; transfer to
45 other correctional facilities; and any non-isolated confinement
46 sanction authorized by Department of Corrections regulations;
47 restrictions on religious, mail, and telephone privileges, visit
48 contacts, or outdoor and recreation access shall only be imposed as

- 1 is necessary for the safety of the inmate or others, but shall not
2 restrict access to food, basic necessities, or legal access;
- 3 b. requiring training of disciplinary staff and all staff working
4 with inmates in isolated confinement and requiring that this training
5 include:
- 6 (1) assistance from appropriate professionals including, but not
7 limited to, professionals in the Department of Human Services to
8 periodically train all staff working with inmates in isolated
9 confinement;
- 10 (2) standards for isolated confinement, including that it shall be
11 limited to when an inmate commits an offense involving violence,
12 escapes or attempts to escape, or poses a threat to institutional
13 safety; that the maximum penalties for each offense shall be based
14 on the seriousness of the offense; and available less restrictive
15 interventions; and
- 16 (3) the identification of developmental disabilities, and the
17 symptoms of mental illness, including trauma disorders, and
18 methods of safe responses to people in distress;
- 19 c. requiring documentation of all decisions, procedures, and
20 reviews of inmates placed in isolated confinement;
- 21 d. requiring monitoring of compliance with all rules governing
22 cells, units, and other places where inmates are placed in isolated
23 confinement;
- 24 e. requiring posting on the official website of the Department
25 of Corrections of quarterly reports on the use of isolated
26 confinement, by age, sex, gender identity, ethnicity, incidence of
27 mental illness, and type of confinement status, at each facility,
28 including a county correctional facility; these reports shall include
29 the population on the last day of each quarter and a non-duplicative
30 cumulative count of people exposed to isolated confinement for
31 each fiscal year. These inmate reports also shall include the
32 incidence of emergency confinement, self-harm, suicide, and assault
33 in any isolated confinement unit, as well as explanations for each
34 instance of facility-wide lockdown. These reports shall not include
35 personally identifiable information regarding any inmate; and
- 36 f. modifying the New Jersey Administrative Code for
37 consistency with the provisions of this act and to require
38 appropriate alternative placements for vulnerable populations in
39 county correctional facilities.
- 40
- 41 8. This act shall take effect on the first day of the thirteenth
42 month next following enactment, except the commissioner may take
43 any anticipatory administrative action in advance as shall be
44 necessary for the implementation of this act.

STATEMENT

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This bill restricts the use of isolated confinement in correctional facilities in New Jersey. The bill prohibits inmates incarcerated or detained in correctional facilities from being placed in isolated confinement unless there is reasonable cause to believe that the inmate or others would be at substantial risk of immediate, serious harm as evidenced by recent threats or conduct, and any less restrictive intervention would be insufficient to reduce that risk. The bill defines isolated confinement as “confinement of an inmate in a correctional facility, pursuant to disciplinary, administrative, protective, investigative, medical, or other classification, in a cell or similarly confined holding or living space, alone or with other inmates, for approximately 20 hours or more per day with severely restricted activity, movement, and social interaction.”

The bill provides that the correctional facility is responsible for establishing the justification for isolated confinement by clear and convincing evidence, and that inmates may not be placed in isolated confinement for non-disciplinary reasons. Certain exceptions to the restrictions on isolated confinement for facility-wide lock downs, emergency confinement, medical isolation, and protective custody are provided by the bill.

The bill requires that inmates receive a personal and comprehensive medical and mental health examination, conducted by a clinician, before being placed in isolated confinement. However, in a county correctional facility, a preliminary examination is to be conducted by a member of the medical staff within 12 hours of confinement and the clinical examination is to be conducted within 48 hours of confinement.

The bill requires that initial procedures and reviews providing timely, fair, and meaningful opportunities for an inmate to contest the confinement are to be made available. The procedures are to include the right to an initial hearing within 72 hours of placement and reviews every 15 days thereafter, in the absence of exceptional circumstances, unavoidable delays, or reasonable postponements; the right to appear at the hearing; the right to be represented at the hearing; an independent hearing officer; and a written statement of reasons for the decision made at the hearing.

The bill provides that the final decision to place an inmate in isolated confinement is to be made by the facility administrator, except in cases involving medical isolation, and that an inmate is to be removed from isolated confinement if the administrator determines that the inmate no longer meets the standard for isolated confinement.

The bill requires that a clinician evaluate each inmate placed in isolated confinement on a daily basis, in a confidential setting outside of the cell whenever possible, to determine whether the inmate is a member of a vulnerable population. However, in a

1 county correctional facility, an inmate in isolated confinement is to
2 be evaluated by a member of the medical staff as frequently as
3 clinically indicated, but at least once a week. The bill provides that
4 an inmate determined to be a member of a vulnerable population is
5 to be immediately removed from isolated confinement to an
6 appropriate placement. An inmate is a member of a vulnerable
7 population, as defined in the bill, if he or she is 21 years of age or
8 younger; is 65 years of age or older; has a disability based on a
9 mental illness, a history of psychiatric hospitalization, or has
10 recently exhibited conduct, including but not limited to serious self-
11 mutilation, indicating the need for further observation or evaluation
12 to determine the presence of mental illness; has a developmental
13 disability; has a serious medical condition which cannot effectively
14 be treated in isolated confinement; is pregnant; is in the postpartum
15 period, or has recently suffered a miscarriage or terminated a
16 pregnancy; has a significant auditory or visual impairment; or is
17 perceived to be lesbian, gay, bisexual, transgender, or intersex.

18 The bill further provides that no inmate is to be placed in isolated
19 confinement for more than 15 consecutive days, or for more than 20
20 days during any 60-day period, and that cells or other holding or
21 living spaces used for isolated confinement are to be properly
22 ventilated, lit, temperature-controlled, clean, and equipped with
23 properly functioning sanitary fixtures.

24 The bill provides that staffing patterns for correctional and
25 program staff are to be set at levels necessary to ensure the safety of
26 staff and inmates under the provisions of the bill.