

[First Reprint]

ASSEMBLY, No. 314

STATE OF NEW JERSEY

218th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

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Assemblywomen **Quijano, Lopez,** Senators **Singleton, Cruz-Perez, Turner,**
Gill, Greenstein and Cryan

SYNOPSIS

Restricts use of isolated confinement in correctional facilities.

CURRENT VERSION OF TEXT

As reported by the Assembly Appropriations Committee on June 18, 2019,
with amendments.

(Sponsorship Updated As Of: 6/21/2019)

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
28 consequences of solitary confinement on persons detained in
29 correctional facilities, President Obama ¹[recently]¹
30 reforms ¹in January 2016¹ to reduce its use in federal correctional
31 facilities, including banning restrictive housing for low-level
32 offenders and juveniles; decreasing the maximum length of time an
33 inmate may be held in restricted housing from 365 days to 60 days;
34 and increasing time spent outside the cell for inmates held in
35 restrictive housing.

36
37 3. For the purposes of this act:

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

43 “Commissioner” means the Commissioner of Corrections.

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:

¹Assembly AAP committee amendments adopted June 18, 2019.

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

7 “County correctional facility” means a county jail, penitentiary,
8 prison, or workhouse.

9 “Emergency confinement” means the ¹**[isolated confinement]**
10 segregation¹ of an inmate in a correctional facility when there is
11 reasonable cause to believe that this ¹**[confinement]** segregation¹ is
12 necessary for reducing a substantial risk of imminent serious harm
13 to the inmate or others, as evidenced by recent conduct.

14 “Facility administrator” or “administrator” means the chief
15 operating officer or senior administrative designee of a correctional
16 facility.

17 “Inmate” means a person confined in a correctional facility.

18 “Isolated confinement” means confinement of an inmate in a
19 correctional facility, pursuant to disciplinary, administrative,
20 protective, investigative, medical, or other classification, in a cell or
21 similarly confined holding or living space, alone or with other
22 inmates, for approximately 20 hours or more per day ¹in a State
23 correctional facility or 22 hours or more per day in a county
24 correctional facility¹, with severely restricted activity, movement,
25 and social interaction. ¹Isolated confinement shall not include
26 confinement due to a facility-wide or unit-wide lockdown that is
27 required to ensure the safety of inmates and staff.¹

28 “Less restrictive intervention” means a placement or conditions
29 of confinement, or both, in the current or an alternative correctional
30 facility, under conditions less restrictive of an inmate's movement,
31 privileges, activities, or social interactions.

32 “Medical isolation” means isolated confinement of an inmate for
33 medical reasons, including a mental health emergency or when
34 necessary for preventing the spread of a communicable disease.

35 “Medical staff” means State licensed ¹**[psychiatrists]**
36 physicians¹, physician assistants, advanced practice nurses or
37 clinical nurse specialists or, for mental health evaluations or
38 decisions, those ¹registered¹ nurses with a specialty in psychiatric
39 nursing, or comparably credentialed employees or contractors
40 employed to provide healthcare.

41 “Member of a vulnerable population” means any inmate who:

- 42 a. is 21 years of age or younger;
- 43 b. is 65 years of age or older;
- 44 c. has a disability based on a mental illness, as defined in
45 subsection r. of section 2 of P.L.1987, c.116 (C.30:4-27.2), a history
46 of psychiatric hospitalization, or has recently exhibited conduct,
47 including but not limited to serious self-mutilation, indicating the

1 need for further observation or evaluation to determine the presence
2 of mental illness;

3 d. has a developmental disability, as defined in subsection b. of
4 section 3 of P.L.1985, c.145 (C.30:6D-25);

5 e. has a serious medical condition which cannot effectively be
6 treated in isolated confinement;

7 f. is pregnant, is in the postpartum period, or has recently
8 suffered a miscarriage or terminated a pregnancy;

9 g. has a significant auditory or visual impairment; or

10 h. is perceived to be lesbian, gay, bisexual, transgender, or
11 intersex.

12 ¹“Postpartum period” means the 45 days after childbirth.¹

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

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

20

21 4. a. The use of isolated confinement in correctional facilities
22 in this State shall be ¹~~restricted~~ limited¹ as follows:

23 (1) Except as otherwise provided in paragraphs (1), (3), and (4)
24 of subsection d. of this section, an inmate shall not be placed in
25 isolated confinement unless there is reasonable cause to believe that
26 the inmate would create a substantial risk of ¹~~immediate~~¹ serious
27 harm to himself or another, ¹including but not limited to a
28 correctional police officer or other employee or volunteer in the
29 facility,¹ as evidenced by recent threats or conduct, and a less
30 restrictive intervention would be insufficient to reduce this risk.
31 Except as otherwise provided in paragraphs (1), (3), and (4) of
32 subsection d. of this section, the correctional facility shall bear the
33 burden of establishing this standard by clear and convincing
34 evidence.

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

38 (3) Except as otherwise provided in paragraph (1) of subsection
39 d. of this section, an inmate shall not be placed in isolated
40 confinement before receiving a personal and comprehensive
41 medical and mental health examination conducted by a clinician;
42 however, in a county correctional facility, a preliminary
43 examination shall be conducted by a member of the medical staff
44 within 12 hours of confinement and the clinical examination shall
45 be conducted within 48 hours of confinement ¹, but if staffing levels
46 require, the period for conducting a clinical examination may be
47 extended to 72 hours of confinement¹.

1 (4) Except as otherwise provided in paragraph (1) of subsection
2 d. of this section, an inmate shall only be held in isolated
3 confinement pursuant to initial procedures and reviews which
4 provide timely, fair and meaningful opportunities for the inmate to
5 contest the confinement. These procedures shall include the right to
6 an initial hearing within 72 hours of placement ¹absent exigent
7 circumstances,¹ and a review every ¹~~15~~ ¹30¹ days thereafter, in the
8 absence of exceptional circumstances, unavoidable delays, or
9 reasonable postponements; the right to appear at the hearing; the
10 right to be represented at the hearing; an independent hearing
11 officer; and a written statement of reasons for the decision made at
12 the hearing.

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

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

21 (7) A clinician shall ¹~~evaluate~~ ¹conduct a mental health and
22 physical health status examination for¹ each inmate placed in
23 isolated confinement on a daily basis, in a confidential setting
24 outside of the cell whenever possible, to determine whether the
25 inmate is a member of a vulnerable population; however, in a
26 county correctional facility, an inmate in isolated confinement shall
27 be evaluated by a member of the medical staff as frequently as
28 clinically indicated, but at least once ¹~~a~~ ¹per¹ week. Except as
29 otherwise provided in subsection d. of this section, an inmate
30 determined to be a member of a vulnerable population shall be
31 immediately removed from isolated confinement and moved to an
32 appropriate placement.

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

37 (9) Except as otherwise provided in paragraph (1) of subsection
38 d. of this section during a facility-wide lock down, an inmate shall
39 not be placed in isolated confinement for more than ¹~~15~~ ¹20¹
40 consecutive days, or for more than ¹~~20~~ ¹30¹ days during any 60-
41 day period.

42 (10) Cells or other holding or living space used for isolated
43 confinement are to be properly ventilated, lit, ¹~~temperature-~~
44 ~~controlled~~ ¹temperature-monitored¹, clean, and equipped with
45 properly functioning sanitary fixtures.

46 (11) A correctional facility shall maximize the amount of time
47 that an inmate held in isolated confinement spends outside of the

1 cell by providing, as appropriate, access to recreation, education,
2 clinically appropriate treatment therapies, skill-building activities,
3 and social interaction with staff and other inmates.

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

6 (13) An inmate held in isolated confinement shall not be denied
7 access to appropriate medical care, including emergency medical
8 care.

9 (14) An inmate 'in a State correctional facility'¹ shall not be
10 directly released from isolated confinement to the community
11 during the final 180 days of the inmate's term of incarceration,
12 unless it is necessary for the safety of the inmate, staff, other
13 inmates, or the public. 'An inmate in a county correctional facility
14 shall not be directly released from isolated confinement to the
15 community during the final 30 days of the inmate's term of
16 incarceration, unless it is necessary for the safety of the inmate,
17 staff, other inmates, or the public.'

18 (15) An inmate shall not be held in isolated confinement based
19 on the inmate's race, creed, color, national origin, nationality,
20 ancestry, age, marital status, domestic partnership or civil union
21 status, affectional or sexual orientation, genetic information,
22 pregnancy or breastfeeding status, sex, gender identity or
23 expression, disability or atypical hereditary cellular or blood trait.'¹

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

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

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

33 (b) who would otherwise be placed in isolated confinement shall
34 be screened by a correctional facility clinician or the appropriate
35 screening service pursuant to the New Jersey Administrative Code
36 and, if found to meet the standards of civil commitment, shall be
37 placed in a specialized unit, as designated by the commissioner, or
38 civilly committed to the least restrictive appropriate short term care
39 or psychiatric facility designated by the Department of Human
40 Services.

41 (2) An inmate who is a member of a vulnerable population
42 because the inmate is 65 years of age or older, has a serious medical
43 condition which cannot be effectively treated in isolated
44 confinement, or is pregnant, is in the postpartum period, or has
45 recently suffered a miscarriage or terminated a pregnancy, who
46 would otherwise be placed in isolated confinement, shall alternately
47 be placed in an appropriate medical or other unit as designated by

1 the commissioner. The requirements contained in this subsection
2 shall not apply to a county correctional facility. ¹】

3 c. An inmate shall not be placed in isolated confinement or in
4 any other cell or other holding or living space, in any facility, with
5 one or more inmates if there is reasonable cause to believe that
6 there is a risk of harm or harassment, intimidation, extortion, or
7 other physical or emotional abuse to that inmate or another inmate
8 in that placement.

9 d. Isolated confinement shall be permitted under limited
10 circumstances as follows:

11 (1) The facility administrator ¹or designated shift commander¹
12 determines that a facility-wide lock down is required to ensure the
13 safety of inmates in the facility until the administrator ¹or shift
14 commander¹ determines that these circumstances no longer exist.
15 The facility administrator ¹or shift commander¹ shall document
16 specific reasons why any lockdown is necessary for more than 24
17 hours, and why less restrictive interventions are insufficient to
18 accomplish the facility's safety goals. Within ¹【six hours】 15 days¹
19 commissioner shall publish the reasons on the Department of
20 Corrections website and provide meaningful notice of the reasons
21 for the lockdown to the Legislature.

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

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

26 (b) an inmate held in emergency confinement ¹in a State
27 correctional facility¹ shall receive an initial medical and mental
28 health evaluation ¹【within two hours】 immediately prior to
29 placement in emergency confinement¹ and a personal and
30 comprehensive medical and mental health evaluation within 24
31 examination shall be conducted by a member of the medical staff
32 within 12 hours of confinement and the comprehensive medical and
33 mental health evaluation within ¹【48】 72¹ hours. Reports of these
34 evaluations shall be immediately provided to the facility
35 administrator.

36 (3) A ¹【physician】 clinician¹, based on a personal examination,
37 determines that an inmate should be placed or retained in medical
38 isolation.

39 The decision to place and retain an inmate in medical isolation
40 due to a mental health emergency shall be made by a clinician based
41 on a personal examination. In any case of isolation under this
42 paragraph, a clinical review shall be conducted at least every ¹【six】
43 eight¹ hours and as ¹clinically¹ indicated. An inmate in medical
44 isolation pursuant to this paragraph ¹【shall】 may¹ be placed in a
45 mental health unit as designated by the commissioner. In the case
46 of a county correctional facility, a decision to place an inmate in

1 medical isolation shall be made by a member of the medical staff
2 and be based on a personal examination; clinical reviews shall be
3 conducted within ¹~~48~~ 72¹ hours and then as clinically indicated.

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

6 (a) ¹The facility shall keep a written record of a request by an
7 inmate to be placed in voluntary protective custody.¹ The inmate
8 may be placed in voluntary protective custody only with informed,
9 voluntary ¹~~written~~¹ consent and when there is reasonable cause
10 to believe that confinement is necessary to prevent reasonably
11 foreseeable harm. When an inmate makes an informed voluntary
12 ¹~~written~~¹ request for protective custody, the correctional facility
13 shall bear the burden of establishing a basis for refusing the request.

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

18 (c) An inmate placed in protective custody shall receive
19 ¹~~comparable~~ similar¹ opportunities for activities, movement, and
20 social interaction, consistent with their safety and the safety of
21 others, as are inmates in the general population of the facility.

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

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

28 (f) The facility administrator shall place an inmate in a less
29 restrictive intervention, including transfer to the general population
30 of another institution or to a special-purpose housing unit for
31 inmates who face similar threats, before placing the inmate in
32 isolated confinement for protection unless the inmate poses ¹~~an~~
33 extraordinary a¹ security risk so great that transferring the inmate
34 would be insufficient to ensure the inmate's safety.

35 ¹~~(5)~~ A member of a vulnerable population shall not be placed
36 in isolated confinement with one or more inmates, except with the
37 inmate's informed, voluntary, written consent. ¹

38

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

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

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

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

7 ¹[c. An inmate who has been placed in isolated confinement
8 pending investigation of a disciplinary offense shall be considered
9 for release to the general population if the inmate demonstrates
10 good behavior while confined. If the inmate is found guilty of the
11 disciplinary offense, the inmate's good behavior shall be considered
12 in determining the appropriate penalty.]¹

13

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

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

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

22 c. develop a plan for providing step-down and transitional
23 units, programs, and staffing patterns to accommodate inmates
24 currently placed in isolated confinement, inmates who will be
25 placed in isolated confinement, and inmates who receive an
26 intermediate sanction in lieu of being placed in isolated
27 confinement. Staffing patterns for correctional and program staff
28 shall be set at levels necessary to ensure the safety of staff and
29 inmates under the provisions of this act.

30

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

35 a. establishing less restrictive interventions to isolated
36 confinement, including separation from other inmates; transfer to
37 other correctional facilities; and any non-isolated confinement
38 sanction authorized by Department of Corrections regulations;
39 restrictions on religious, mail, and telephone privileges, visit
40 contacts, or outdoor and recreation access shall only be imposed as
41 is necessary for the safety of the inmate or others, but shall not
42 restrict access to food, basic necessities, or legal access;

43 b. requiring training of disciplinary staff and all staff working
44 with inmates in isolated confinement and requiring that this training
45 include:

46 (1) assistance from appropriate professionals ¹[including, but
47 not limited to, professionals in the Department of Human

- 1 Services¹ to periodically train all staff working with inmates in
2 isolated confinement;
- 3 (2) standards for isolated confinement, including that it shall be
4 limited to when an inmate commits an offense involving violence,
5 escapes or attempts to escape, or poses a threat to institutional
6 safety; that the maximum penalties for each offense shall be based
7 on the seriousness of the offense; and available less restrictive
8 interventions; and
- 9 (3) the identification of developmental disabilities, and the
10 symptoms of mental illness, including trauma disorders, and
11 methods of safe responses to people in distress;
- 12 c. requiring documentation of all decisions, procedures, and
13 reviews of inmates placed in isolated confinement;
- 14 d. requiring monitoring of compliance with all rules governing
15 cells, units, and other places where inmates are placed in isolated
16 confinement;
- 17 e. requiring posting on the official website of the Department
18 of Corrections of quarterly reports on the use of isolated
19 confinement, ¹without revealing any personal identifying
20 information.¹ by age, sex, gender identity, ethnicity, incidence of
21 mental illness, and type of confinement status, at each facility,
22 including a county correctional facility; these reports shall include
23 the population on the last day of each quarter and a non-duplicative
24 cumulative count of people exposed to isolated confinement for
25 each fiscal year. These inmate reports also shall include the
26 incidence of emergency confinement, self-harm, suicide, and assault
27 in any isolated confinement unit ¹[, as well as explanations for each
28 instance of facility-wide lockdown]¹. These reports shall not
29 include personally identifiable information regarding any inmate;
30 and
- 31 f. modifying the New Jersey Administrative Code for
32 consistency with the provisions of this act and to require
33 appropriate alternative placements for vulnerable populations in
34 county correctional facilities.
- 35
- 36 8. This act shall take effect on the first day of the thirteenth
37 month next following enactment, except the commissioner may take
38 any anticipatory administrative action in advance as shall be
39 necessary for the implementation of this act.