

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 314

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 18, 2019

The Assembly Appropriations Committee reports favorably Assembly Bill No. 314, with committee amendments.

As amended and reported by the committee, Assembly Bill No. 314 limits the use of isolated confinement in correctional facilities in this State.

The amended bill generally prohibits inmates from being placed in isolated confinement unless the correctional facility establishes by clear and convincing evidence that 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 amended 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 in a State correctional facility or 22 hours or more per day in a county correctional facility, with severely restricted activity, movement, and social interaction.” Under the bill as amended, isolated confinement does not include facility-wide or unit-wide lockdowns required to ensure the safety of inmates and staff.

Under the amended bill, inmates may not be placed in isolated confinement for non-disciplinary reasons, with the exception of facility-wide lock downs, medical isolation, and protective custody. Inmates generally also are not to be placed in isolated confinement pending investigation of disciplinary offenses.

The amended bill requires qualified healthcare personnel to conduct a personal and comprehensive medical and mental health examination before a State inmate may be placed in isolated confinement. County inmates are to receive a preliminary examination by medical staff within 12 hours of confinement and a clinical examination within 48 hours of confinement, but if staffing levels require, the 48 hours to conduct a clinical examination may be extended to 72 hours. Inmates are to be provided an opportunity to contest the confinement and have the right to an initial hearing within 72 hours of placement, absent exigent circumstances, with subsequent

reviews every 30 days. The amended bill accords the inmates the right to appear at the hearing presided over by an independent hearing officer, have representation, and receive a written statement explaining the reasons for the decision made at the hearing. The facility administrator is responsible for making the final decision to place an inmate in isolated confinement and to remove an inmate who no longer meets the standards for confinement.

The bill requires that qualified healthcare personnel daily conduct a mental health and physical health status examination of State inmates to determine whether the inmate is a member of a vulnerable population; county inmates are to be evaluated by a member of the medical staff at least once per week. Inmates determined to be a member of a vulnerable population are to be immediately moved to an appropriate placement. An inmate is a member of a vulnerable population, as defined in the bill, if he or she is 21 years of age or younger; is 65 years of age or older; has a disability based on a mental illness, a history of psychiatric hospitalization, or has recently exhibited conduct, including but not limited to serious self-mutilation, indicating the need for further observation or evaluation to determine the presence of mental illness; has a developmental disability; has a serious medical condition which cannot effectively be treated in isolated confinement; is pregnant; is in the postpartum period, or has recently suffered a miscarriage or terminated a pregnancy; has a significant auditory or visual impairment; or is perceived to be lesbian, gay, bisexual, transgender, or intersex. The amended bill defines “postpartum period” as 45 days after childbirth.

Inmates placed in isolated confinement are not to be held there for more than 20 consecutive days, or for more than 30 days during any 60-day period. Cells or other spaces in which inmates are confined are to be properly ventilated, lit, temperature-monitored, clean, and equipped with functioning sanitary fixtures.

The commissioner is to develop policies and procedures governing isolated confinement and ensure adequate correctional and program staff to ensure the safety of staff and inmates.

COMMITTEE AMENDMENTS:

The committee amended the bill to:

- 1) change the definition of isolated confinement to change the number of hours for county correctional facilities from 20 to 22; in the bill as introduced, 20 hours or more applied to both State and county correctional facilities;
- 2) clarify that isolated confinement does not include facility-wide or unit-wide lockdowns that are required to ensure the safety of inmates and staff;
- 3) defines “postpartum period” as 45 days after childbirth;

4) if staffing levels require, increase from 48 to 72 hours for county correctional facilities to conduct a clinical examination of a person placed in isolated confinement;

5) clarify that inmates are to be provided an opportunity to contest isolated confinement within 72, *absent exigent circumstances*, and subsequent reviews are required every 30 days rather than every 15 days as required in the introduced bill;

6) limit isolated confinement to 20 consecutive days and 30 days during any 60-day period; as introduced, the limit was 15 consecutive days and not more than 20 days during any 60 day period;

7) specify that county inmates are not to be directly released from isolated confinement to the community during the final 30 days of their sentence; as introduced, the 180 day period applicable to State inmates also applied to county inmates;

8) clarify that inmates are not to be held in isolated confinement based on their race, creed, color, national origin, nationality, ancestry, age, marital status, domestic partnership or civil union status, affectional or sexual orientation, genetic information, pregnancy or breastfeeding status, sex, gender identity or expression, disability or atypical hereditary cellular or blood trait;

9) remove the provision that certain members of a vulnerable population are not to be disciplined for refusing treatment or medication and others should be placed in alternative medical or other units;

10) increase from six hours to 15 days within which a facility is required to report the reasons for extending a facility lock-down;

11) inmates placed in emergency confinement in a State correctional facility are to receive an initial medical and mental health evaluation immediately prior to placement followed by comprehensive evaluations within 24 hours; as introduced, the initial evaluations were to be made within two hours; county facilities have 48 hours, rather than 72 hours, to conduct comprehensive evaluations;

12) remove the requirement that members of a vulnerable population give their informed, voluntary written consent to be placed in isolated confinement with other inmates;

13) remove a provision allowing an inmate in isolated confinement pending a disciplinary investigation to be released for good behavior and if convicted, consider good behavior in determining a penalty.

14) clarify that each inmate placed in isolated confinement is to receive a mental and physical health status exam on a daily basis in a State correctional facility and at least once per week in a county correctional facility;

15) require the facility to keep a written record of an inmate's request to be placed in voluntary protective custody;

16) remove the requirement that Department of Corrections post explanations for each facility-wide lockdown to its website; and

17) other clarifying and technical amendments.

FISCAL IMPACT:

The Office of Legislative Services (OLS) estimates that this bill may result in State and local expenditure increases by an indeterminate amount. It is unknown to the OLS how many inmates would be placed in isolated confinement under the provisions of this bill, and if additional clinicians or members of the medical staff for the State correctional facilities and the county correctional facilities would be needed to conduct the examinations as described in the bill. In addition, it is unknown how other staffing patterns for the State correctional facilities and the county correctional facilities would be affected by this bill.