

(CORRECTED COPY)

P.L. 2019, CHAPTER 160, *approved July 11, 2019*
Assembly, No. 314 (*First Reprint*)

- 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 adopted
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.

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 3. For the purposes of this act:

2 “Clinician” means a State licensed physician, except if the
3 clinician makes mental health evaluations, the term shall mean a
4 State licensed psychiatrist or psychologist, or an advanced practice
5 nurse or clinical nurse specialist with a specialty in psychiatric
6 nursing.

7 “Commissioner” means the Commissioner of Corrections.

8 “Correctional facility” means any State correctional facility or
9 county correctional facility, and any State, county, or private
10 facility detaining persons pursuant to any intergovernmental service
11 agreement or other contract with any State, county, or federal
12 agency, including, but not limited to, United States Immigration and
13 Customs Enforcement.

14 “County correctional facility” means a county jail, penitentiary,
15 prison, or workhouse.

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

21 “Facility administrator” or “administrator” means the chief
22 operating officer or senior administrative designee of a correctional
23 facility.

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

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

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

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

42 “Medical staff” means State licensed ¹**[psychiatrists]**
43 physicians¹, physician assistants, advanced practice nurses or
44 clinical nurse specialists or, for mental health evaluations or
45 decisions, those ¹registered¹ nurses with a specialty in psychiatric
46 nursing, or comparably credentialed employees or contractors
47 employed to provide healthcare.

- 1 “Member of a vulnerable population” means any inmate who:
- 2 a. is 21 years of age or younger;
- 3 b. is 65 years of age or older;
- 4 c. has a disability based on a mental illness, as defined in
- 5 subsection r. of section 2 of P.L.1987, c.116 (C.30:4-27.2), a history
- 6 of psychiatric hospitalization, or has recently exhibited conduct,
- 7 including but not limited to serious self-mutilation, indicating the
- 8 need for further observation or evaluation to determine the presence
- 9 of mental illness;
- 10 d. has a developmental disability, as defined in subsection b. of
- 11 section 3 of P.L.1985, c.145 (C.30:6D-25);
- 12 e. has a serious medical condition which cannot effectively be
- 13 treated in isolated confinement;
- 14 f. is pregnant, is in the postpartum period, or has recently
- 15 suffered a miscarriage or terminated a pregnancy;
- 16 g. has a significant auditory or visual impairment; or
- 17 h. is perceived to be lesbian, gay, bisexual, transgender, or
- 18 intersex.

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

20 “Protective custody” means confinement of an inmate in a cell or

21 similarly confined holding or living space, under conditions

22 necessary to protect the inmate or others.

23 “State correctional facility” means a State prison or other penal

24 institution or an institution or facility designated by the

25 commissioner as a place of confinement under section 2 of

26 P.L.1969, c.22. (C.30:4-91.2).

27

28 4. a. The use of isolated confinement in correctional facilities

29 in this State shall be ¹**restricted** limited¹ as follows:

30 (1) Except as otherwise provided in paragraphs (1), (3), and (4)

31 of subsection d. of this section, an inmate shall not be placed in

32 isolated confinement unless there is reasonable cause to believe that

33 the inmate would create a substantial risk of ¹**immediate**¹ serious

34 harm to himself or another, ¹including but not limited to a

35 correctional police officer or other employee or volunteer in the

36 facility.¹ as evidenced by recent threats or conduct, and a less

37 restrictive intervention would be insufficient to reduce this risk.

38 Except as otherwise provided in paragraphs (1), (3), and (4) of

39 subsection d. of this section, the correctional facility shall bear the

40 burden of establishing this standard by clear and convincing

41 evidence.

42 (2) Except as otherwise provided in paragraphs (1), (3), and (4)

43 of subsection d. of this section, an inmate shall not be placed in

44 isolated confinement for non-disciplinary reasons.

45 (3) Except as otherwise provided in paragraph (1) of subsection

46 d. of this section, an inmate shall not be placed in isolated

47 confinement before receiving a personal and comprehensive

1 medical and mental health examination conducted by a clinician;
2 however, in a county correctional facility, a preliminary
3 examination shall be conducted by a member of the medical staff
4 within 12 hours of confinement and the clinical examination shall
5 be conducted within 48 hours of confinement ¹, but if staffing levels
6 require, the period for conducting a clinical examination may be
7 extended to 72 hours of confinement¹.

8 (4) Except as otherwise provided in paragraph (1) of subsection
9 d. of this section, an inmate shall only be held in isolated
10 confinement pursuant to initial procedures and reviews which
11 provide timely, fair and meaningful opportunities for the inmate to
12 contest the confinement. These procedures shall include the right to
13 an initial hearing within 72 hours of placement ¹absent exigent
14 circumstances,¹ and a review every ¹~~15~~ 30¹ days thereafter, in the
15 absence of exceptional circumstances, unavoidable delays, or
16 reasonable postponements; the right to appear at the hearing; the
17 right to be represented at the hearing; an independent hearing
18 officer; and a written statement of reasons for the decision made at
19 the hearing.

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

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

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

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

44 (9) Except as otherwise provided in paragraph (1) of subsection
45 d. of this section during a facility-wide lock down, an inmate shall
46 not be placed in isolated confinement for more than ¹~~15~~ 20¹

1 consecutive days, or for more than ¹~~20~~ 30¹ days during any 60-
2 day period.

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

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

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

14 (13) An inmate held in isolated confinement shall not be denied
15 access to appropriate medical care, including emergency medical
16 care.

17 (14) An inmate ¹in a State correctional facility¹ shall not be
18 directly released from isolated confinement to the community
19 during the final 180 days of the inmate's term of incarceration,
20 unless it is necessary for the safety of the inmate, staff, other
21 inmates, or the public. ¹An inmate in a county correctional facility
22 shall not be directly released from isolated confinement to the
23 community during the final 30 days of the inmate's term of
24 incarceration, unless it is necessary for the safety of the inmate,
25 staff, other inmates, or the public.

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

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

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

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

41 (b) who would otherwise be placed in isolated confinement shall
42 be screened by a correctional facility clinician or the appropriate
43 screening service pursuant to the New Jersey Administrative Code
44 and, if found to meet the standards of civil commitment, shall be
45 placed in a specialized unit, as designated by the commissioner, or
46 civilly committed to the least restrictive appropriate short term care

1 or psychiatric facility designated by the Department of Human
2 Services.

3 (2) An inmate who is a member of a vulnerable population
4 because the inmate is 65 years of age or older, has a serious medical
5 condition which cannot be effectively treated in isolated
6 confinement, or is pregnant, is in the postpartum period, or has
7 recently suffered a miscarriage or terminated a pregnancy, who
8 would otherwise be placed in isolated confinement, shall alternately
9 be placed in an appropriate medical or other unit as designated by
10 the commissioner. The requirements contained in this subsection
11 shall not apply to a county correctional facility.】¹

12 c. An inmate shall not be placed in isolated confinement or in
13 any other cell or other holding or living space, in any facility, with
14 one or more inmates if there is reasonable cause to believe that
15 there is a risk of harm or harassment, intimidation, extortion, or
16 other physical or emotional abuse to that inmate or another inmate
17 in that placement.

18 d. Isolated confinement shall be permitted under limited
19 circumstances as follows:

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

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

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

35 (b) an inmate held in emergency confinement ¹in a State
36 correctional facility¹ shall receive an initial medical and mental
37 health evaluation ¹~~【within two hours】~~ immediately prior to
38 placement in emergency confinement¹ and a personal and
39 comprehensive medical and mental health evaluation within 24
40 examination shall be conducted by a member of the medical staff
41 within 12 hours of confinement and the comprehensive medical and
42 mental health evaluation within ¹~~【48】~~ 72¹ hours. Reports of these
43 evaluations shall be immediately provided to the facility
44 administrator.

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

1 The decision to place and retain an inmate in medical isolation
2 due to a mental health emergency shall be made by a clinician based
3 on a personal examination. In any case of isolation under this
4 paragraph, a clinical review shall be conducted at least every ¹~~['six]~~
5 eight¹ hours and as ¹clinically¹ indicated. An inmate in medical
6 isolation pursuant to this paragraph ¹~~['shall]~~ may¹ be placed in a
7 mental health unit as designated by the commissioner. In the case
8 of a county correctional facility, a decision to place an inmate in
9 medical isolation shall be made by a member of the medical staff
10 and be based on a personal examination; clinical reviews shall be
11 conducted within ¹~~['48]~~ 72¹ hours and then as clinically indicated.

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

14 (a) ¹The facility shall keep a written record of a request by an
15 inmate to be placed in voluntary protective custody.¹ The inmate
16 may be placed in voluntary protective custody only with informed,
17 voluntary ¹~~['written']~~¹ consent and when there is reasonable cause
18 to believe that confinement is necessary to prevent reasonably
19 foreseeable harm. When an inmate makes an informed voluntary
20 ¹~~['written']~~¹ request for protective custody, the correctional facility
21 shall bear the burden of establishing a basis for refusing the request.

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

26 (c) An inmate placed in protective custody shall receive
27 ¹~~['comparable']~~ similar¹ opportunities for activities, movement, and
28 social interaction, consistent with their safety and the safety of
29 others, as are inmates in the general population of the facility.

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

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

36 (f) The facility administrator shall place an inmate in a less
37 restrictive intervention, including transfer to the general population
38 of another institution or to a special-purpose housing unit for
39 inmates who face similar threats, before placing the inmate in
40 isolated confinement for protection unless the inmate poses ¹~~['an~~
41 extraordinary] a¹ security risk so great that transferring the inmate
42 would be insufficient to ensure the inmate's safety.

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

- 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 ¹[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.]¹
- 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.
- 38
- 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 ¹including, but
7 not limited to, professionals in the Department of Human
8 Services¹ to periodically train all staff working with inmates in
9 isolated 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, ¹without revealing any personal identifying
27 information.¹ by age, sex, gender identity, ethnicity, incidence of
28 mental illness, and type of confinement status, at each facility,
29 including a county correctional facility; these reports shall include
30 the population on the last day of each quarter and a non-duplicative
31 cumulative count of people exposed to isolated confinement for
32 each fiscal year. These inmate reports also shall include the
33 incidence of emergency confinement, self-harm, suicide, and assault
34 in any isolated confinement unit ¹[, as well as explanations for each
35 instance of facility-wide lockdown]¹. These reports shall not
36 include personally identifiable information regarding any inmate;
37 and

38 f. modifying the New Jersey Administrative Code for
39 consistency with the provisions of this act and to require
40 appropriate alternative placements for vulnerable populations in
41 county correctional facilities.

42
43 8. This act shall take effect on the first day of the thirteenth
44 month next following enactment, except the commissioner may take
45 any anticipatory administrative action in advance as shall be
46 necessary for the implementation of this act.

1 _____
2
3 Restricts use of isolated confinement in correctional facilities.