

[First Reprint]

SENATE, No. 3261

STATE OF NEW JERSEY
218th LEGISLATURE

INTRODUCED DECEMBER 6, 2018

Sponsored by:

Senator NELLIE POU

District 35 (Bergen and Passaic)

Senator SANDRA B. CUNNINGHAM

District 31 (Hudson)

Co-Sponsored by:

Senators Singleton, Cruz-Perez, Turner, Gill and Greenstein

SYNOPSIS

Restricts use of isolated confinement in correctional facilities.

CURRENT VERSION OF TEXT

As reported by the Senate Law and Public Safety Committee on June 6, 2019, with amendments.



(Sponsorship Updated As Of: 6/4/2019)

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]’** adopted
30 reforms ¹**‘in January 2016’** 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.

44 “Correctional facility” means any State correctional facility or
45 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:

¹Senate SLP committee amendments adopted June 6, 2019.

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, as evidenced
11 by recent conduct.

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 "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.

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

- 35 a. is 21 years of age or younger;
- 36 b. is 65 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;
- 47 f. is pregnant, is in the postpartum period, or has recently
48 suffered a miscarriage or terminated a pregnancy;
- 49 g. has a significant auditory or visual impairment; or

1 h. is perceived to be lesbian, gay, bisexual, transgender, or
2 intersex.

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

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

10

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

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

23 (2) 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 for non-disciplinary reasons.

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

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

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

48 (6) Except as otherwise provided in paragraph (7) of subsection
49 a. of this section and paragraph (3) of subsection d. of this section,

1 an inmate shall not be placed or retained in isolated confinement if
2 the facility administrator determines that the inmate no longer
3 meets the standard for the confinement.

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

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

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

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

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

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

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

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

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

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

47 (a) shall not be subject to discipline for refusing treatment or
48 medication, or for self-harming or related conduct or threats of this
49 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
27 lock down is required to ensure the safety of inmates in the facility
28 until the administrator determines that these circumstances no
29 longer exist. The facility administrator shall document specific
30 reasons why any lockdown is necessary for more than 24 hours, and
31 why 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
48 hours. Reports of these evaluations shall be immediately provided
49 to the facility administrator.

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

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

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

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

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

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

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

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

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

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

47
48 5. a. An inmate shall not be placed in isolated confinement
49 pending investigation of a disciplinary offense unless:

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

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

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

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

19
20 6. Not less than 90 days before the effective date of this act, the
21 commissioner shall:

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

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

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

35
36 7. In accordance with the "Administrative Procedure Act,"
37 P.L.1968, c.410 (C.52:14B-1 et seq.), the commissioner shall
38 promulgate regulations to effectuate the provisions of this act. The
39 regulations shall include but not be limited to:

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

1 b. requiring training of disciplinary staff and all staff working
2 with inmates in isolated confinement and requiring that this training
3 include:

4 (1) assistance from appropriate professionals including, but not
5 limited to, professionals in the Department of Human Services to
6 periodically train all staff working with inmates in isolated
7 confinement;

8 (2) standards for isolated confinement, including that it shall be
9 limited to when an inmate commits an offense involving violence,
10 escapes or attempts to escape, or poses a threat to institutional
11 safety; that the maximum penalties for each offense shall be based
12 on the seriousness of the offense; and available less restrictive
13 interventions; and

14 (3) the identification of developmental disabilities, and the
15 symptoms of mental illness, including trauma disorders, and
16 methods of safe responses to people in distress;

17 c. requiring documentation of all decisions, procedures, and
18 reviews of inmates placed in isolated confinement;

19 d. requiring monitoring of compliance with all rules governing
20 cells, units, and other places where inmates are placed in isolated
21 confinement;

22 e. requiring posting on the official website of the Department
23 of Corrections of quarterly reports on the use of isolated
24 confinement, by age, sex, gender identity, ethnicity, incidence of
25 mental illness, and type of confinement status, at each facility,
26 including a county correctional facility; these reports shall include
27 the population on the last day of each quarter and a non-duplicative
28 cumulative count of people exposed to isolated confinement for
29 each fiscal year. These inmate reports also shall include the
30 incidence of emergency confinement, self-harm, suicide, and assault
31 in any isolated confinement unit, as well as explanations for each
32 instance of facility-wide lockdown. These reports shall not include
33 personally identifiable information regarding any inmate; and

34 f. modifying the New Jersey Administrative Code for
35 consistency with the provisions of this act and to require
36 appropriate alternative placements for vulnerable populations in
37 county correctional facilities.

38

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