

[Second 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, Greenstein and Cryan

SYNOPSIS

Restricts use of isolated confinement in correctional facilities.

CURRENT VERSION OF TEXT

As reported by the Senate Budget and Appropriations Committee on June 17, 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]’ 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.

²Senate SBA committee amendments adopted June 17, 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 ²**[isolated confinement]**
8 segregation² of an inmate in a correctional facility when there is
9 reasonable cause to believe that this ²**[confinement]** segregation² is
10 necessary for reducing a substantial risk of imminent serious harm
11 to the inmate or others, as evidenced 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 ²in a State
21 correctional facility or 22 hours or more per day in a county
22 correctional facility², with severely restricted activity, movement,
23 and social interaction. ²Isolated confinement shall not include
24 confinement due to a facility-wide or unit-wide lockdown that is
25 required to ensure the safety of inmates and staff.²

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

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

33 "Medical staff" means State licensed ²**[psychiatrists]**
34 physicians², physician assistants, advanced practice nurses or
35 clinical nurse specialists or, for mental health evaluations or
36 decisions, those ²registered² nurses with a specialty in psychiatric
37 nursing, or comparably credentialed employees or contractors
38 employed to provide healthcare.

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

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

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

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

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

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

8 h. is perceived to be lesbian, gay, bisexual, transgender, or
9 intersex.

10 ²“Postpartum period” means the 45 days after childbirth.²

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

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

18
19 4. a. The use of isolated confinement in correctional facilities
20 in this State shall be ²~~restricted~~ limited² as follows:

21 (1) 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 unless there is reasonable cause to believe that
24 the inmate would create a substantial risk of ²~~immediate~~² serious
25 harm to himself or another, ²including but not limited to a
26 correctional police officer or other employee or volunteer in the
27 facility,² as evidenced by recent threats or conduct, and a less
28 restrictive intervention would be insufficient to reduce this risk.
29 Except as otherwise provided in paragraphs (1), (3), and (4) of
30 subsection d. of this section, the correctional facility shall bear the
31 burden of establishing this standard by clear and convincing
32 evidence.

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

36 (3) Except as otherwise provided in paragraph (1) of subsection
37 d. of this section, an inmate shall not be placed in isolated
38 confinement before receiving a personal and comprehensive
39 medical and mental health examination conducted by a clinician;
40 however, in a county correctional facility, a preliminary
41 examination shall be conducted by a member of the medical staff
42 within 12 hours of confinement and the clinical examination shall
43 be conducted within 48 hours of confinement², but if staffing levels
44 require, the period for conducting a clinical examination may be
45 extended to 72 hours of confinement².

46 (4) Except as otherwise provided in paragraph (1) of subsection
47 d. of this section, an inmate shall only be held in isolated
48 confinement pursuant to initial procedures and reviews which

1 provide timely, fair and meaningful opportunities for the inmate to
2 contest the confinement. These procedures shall include the right to
3 an initial hearing within 72 hours of placement ²absent exigent
4 circumstances,² and a review every ²~~[15]~~ ²30² days thereafter, in the
5 absence of exceptional circumstances, unavoidable delays, or
6 reasonable postponements; the right to appear at the hearing; the
7 right to be represented at the hearing; an independent hearing
8 officer; and a written statement of reasons for the decision made at
9 the hearing.

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

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

18 (7) A clinician shall ²~~[evaluate]~~ conduct a mental health and
19 physical health status examination for² each inmate placed in
20 isolated confinement on a daily basis, in a confidential setting
21 outside of the cell whenever possible, to determine whether the
22 inmate is a member of a vulnerable population; however, in a
23 county correctional facility, an inmate in isolated confinement shall
24 be evaluated by a member of the medical staff as frequently as
25 clinically indicated, but at least once ¹~~[a]~~ ¹per¹ week. Except as
26 otherwise provided in subsection d. of this section, an inmate
27 determined to be a member of a vulnerable population shall be
28 immediately removed from isolated confinement and moved to an
29 appropriate placement.

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

34 (9) Except as otherwise provided in paragraph (1) of subsection
35 d. of this section during a facility-wide lock down, an inmate shall
36 not be placed in isolated confinement for more than ²~~[15]~~ ²20²
37 consecutive days, or for more than ²~~[20]~~ ²30² days during any 60-
38 day period.

39 (10) Cells or other holding or living space used for isolated
40 confinement are to be properly ventilated, lit, ²~~[temperature-~~
41 ~~controlled]~~ temperature-monitored², clean, and equipped with
42 properly functioning sanitary fixtures.

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

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

3 (13) An inmate held in isolated confinement shall not be denied
4 access to appropriate medical care, including emergency medical
5 care.

6 (14) An inmate ²in a State correctional facility² shall not be
7 directly released from isolated confinement to the community
8 during the final 180 days of the inmate's term of incarceration,
9 unless it is necessary for the safety of the inmate, staff, other
10 inmates, or the public. ²An inmate in a county correctional facility
11 shall not be directly released from isolated confinement to the
12 community during the final 30 days of the inmate's term of
13 incarceration, unless it is necessary for the safety of the inmate,
14 staff, other inmates, or the public.

15 (15) An inmate shall not be held in isolated confinement based
16 on the inmate's race, creed, color, national origin, nationality,
17 ancestry, age, marital status, domestic partnership or civil union
18 status, affectional or sexual orientation, genetic information,
19 pregnancy or breastfeeding status, sex, gender identity or
20 expression, disability or atypical hereditary cellular or blood trait.²

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

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

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

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

38 (2) An inmate who is a member of a vulnerable population
39 because the inmate is 65 years of age or older, has a serious medical
40 condition which cannot be effectively treated in isolated
41 confinement, or is pregnant, is in the postpartum period, or has
42 recently suffered a miscarriage or terminated a pregnancy, who
43 would otherwise be placed in isolated confinement, shall alternately
44 be placed in an appropriate medical or other unit as designated by
45 the commissioner. The requirements contained in this subsection
46 shall not apply to a county correctional facility.²

47 c. An inmate shall not be placed in isolated confinement or in
48 any other cell or other holding or living space, in any facility, with
49 one or more inmates if there is reasonable cause to believe that

1 there is a risk of harm or harassment, intimidation, extortion, or
2 other physical or emotional abuse to that inmate or another inmate
3 in that placement.

4 d. Isolated confinement shall be permitted under limited
5 circumstances as follows:

6 (1) The facility administrator ²or designated shift commander²
7 determines that a facility-wide lock down is required to ensure the
8 safety of inmates in the facility until the administrator ²or shift
9 commander² determines that these circumstances no longer exist.
10 The facility administrator ²or shift commander² shall document
11 specific reasons why any lockdown is necessary for more than 24
12 hours, and why less restrictive interventions are insufficient to
13 accomplish the facility's safety goals. Within ²~~【six hours】~~ 15 days²
14 of a decision to extend a lockdown beyond 24 hours, the
15 commissioner shall publish the reasons on the Department of
16 Corrections website and provide meaningful notice of the reasons
17 for the lockdown to the Legislature.

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

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

22 (b) an inmate held in emergency confinement ²in a State
23 correctional facility² shall receive an initial medical and mental
24 health evaluation ²~~【within two hours】~~ immediately prior to
25 placement in emergency confinement² and a personal and
26 comprehensive medical and mental health evaluation within 24
27 hours; however, in a county correctional facility, a preliminary
28 examination shall be conducted by a member of the medical staff
29 within 12 hours of confinement and the comprehensive medical and
30 mental health evaluation within ²~~【48】~~ 72² hours. Reports of these
31 evaluations shall be immediately provided to the facility
32 administrator.

33 (3) A ²~~【physician】~~ clinician², based on a personal examination,
34 determines that an inmate should be placed or retained in medical
35 isolation.

36 The decision to place and retain an inmate in medical isolation
37 due to a mental health emergency shall be made by a clinician based
38 on a personal examination. In any case of isolation under this
39 paragraph, a clinical review shall be conducted at least every ²~~【six】~~
40 eight² hours and as ²clinically² indicated. An inmate in medical
41 isolation pursuant to this paragraph ²~~【shall】~~ may² be placed in a
42 mental health unit as designated by the commissioner. In the case
43 of a county correctional facility, a decision to place an inmate in
44 medical isolation shall be made by a member of the medical staff
45 and be based on a personal examination; clinical reviews shall be
46 conducted within ²~~【48】~~ 72² hours and then as clinically indicated.

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

3 (a) ²The facility shall keep a written record of a request by an
4 inmate to be placed in voluntary protective custody.² The inmate
5 may be placed in voluntary protective custody only with informed,
6 voluntary ²[, written]² consent and when there is reasonable cause
7 to believe that confinement is necessary to prevent reasonably
8 foreseeable harm. When an inmate makes an informed voluntary
9 ²[written]² request for protective custody, the correctional facility
10 shall bear the burden of establishing a basis for refusing the request.

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

15 (c) An inmate placed in protective custody shall receive
16 ²[comparable] similar² opportunities for activities, movement, and
17 social interaction, consistent with their safety and the safety of
18 others, as are inmates in the general population of the facility.

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

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

25 (f) The facility administrator shall place an inmate in a less
26 restrictive intervention, including transfer to the general population
27 of another institution or to a special-purpose housing unit for
28 inmates who face similar threats, before placing the inmate in
29 isolated confinement for protection unless the inmate poses ²[an
30 extraordinary] a² security risk so great that transferring the inmate
31 would be insufficient to ensure the inmate's safety.

32 ²[(5) A member of a vulnerable population shall not be placed
33 in isolated confinement with one or more inmates, except with the
34 inmate's informed, voluntary, written consent.]²
35

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

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

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

46 b. An inmate's placement in isolated confinement pending
47 investigation of a disciplinary offense shall be reviewed within 24

1 hours by a supervisory employee who was not involved in the initial
2 placement decision.

3 ²[c. An inmate who has been placed in isolated confinement
4 pending investigation of a disciplinary offense shall be considered
5 for release to the general population if the inmate demonstrates
6 good behavior while confined. If the inmate is found guilty of the
7 disciplinary offense, the inmate's good behavior shall be considered
8 in determining the appropriate penalty.]²

9
10 6. Not less than 90 days before the effective date of this act, the
11 commissioner shall:

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

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

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

25
26 7. In accordance with the "Administrative Procedure Act,"
27 P.L.1968, c.410 (C.52:14B-1 et seq.), the commissioner shall
28 promulgate regulations to effectuate the provisions of this act. The
29 regulations shall include but not be limited to:

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

38 b. requiring training of disciplinary staff and all staff working
39 with inmates in isolated confinement and requiring that this training
40 include:

41 (1) assistance from appropriate professionals ²[including, but
42 not limited to, professionals in the Department of Human
43 Services]² to periodically train all staff working with inmates in
44 isolated confinement;

45 (2) standards for isolated confinement, including that it shall be
46 limited to when an inmate commits an offense involving violence,
47 escapes or attempts to escape, or poses a threat to institutional
48 safety; that the maximum penalties for each offense shall be based

1 on the seriousness of the offense; and available less restrictive
2 interventions; and

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

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

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

11 e. requiring posting on the official website of the Department
12 of Corrections of quarterly reports on the use of isolated
13 confinement, ²without revealing any personal identifying
14 information.² by age, sex, gender identity, ethnicity, incidence of
15 mental illness, and type of confinement status, at each facility,
16 including a county correctional facility; these reports shall include
17 the population on the last day of each quarter and a non-duplicative
18 cumulative count of people exposed to isolated confinement for
19 each fiscal year. These inmate reports also shall include the
20 incidence of emergency confinement, self-harm, suicide, and assault
21 in any isolated confinement unit ²**], as well as explanations for each**
22 **instance of facility-wide lockdown]**². These reports shall not
23 include personally identifiable information regarding any inmate;
24 and

25 f. modifying the New Jersey Administrative Code for
26 consistency with the provisions of this act and to require
27 appropriate alternative placements for vulnerable populations in
28 county correctional facilities.

29

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