

JAN 19 2023

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# A BILL FOR AN ACT

RELATING TO CORRECTIONS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that experts have long  
2 documented the detrimental effects of solitary confinement on  
3 individuals. Spending time in solitary confinement has been  
4 found to increase the risk of premature death, even after  
5 release from incarceration. Solitary confinement is a severe  
6 form of punishment that is closely associated with long-lasting  
7 psychological harm and poor post-release outcomes. The official  
8 purposes of solitary confinement are typically divided into  
9 punishment and correctional facility management. When used as  
10 punishment by facility authorities, sometimes called  
11 "disciplinary custody" or "disciplinary segregation", solitary  
12 confinement serves as a response to misconduct charges such as  
13 fighting or drug use. When used for correctional facility  
14 management, often called "administrative custody" or  
15 "administrative segregation", solitary confinement serves to  
16 separate inmates deemed to pose a threat to staff or other  
17 inmates, or as protective custody for inmates who seem or are



1 determined to be unsafe in the general prison population.  
2 Although the purposes of solitary confinement vary, correctional  
3 facility conditions and restrictions are often similar whether  
4 an incarcerated person is in disciplinary or administrative  
5 custody.

6       The legislature also finds that an overwhelming body of  
7 evidence shows that solitary confinement--which deprives inmates  
8 of meaningful human contact, including phone privileges that  
9 allow them to speak with loved ones--creates permanent  
10 psychological, neurological, and physical damage. The  
11 legislature notes that House Concurrent Resolution No. 85, H.D.  
12 2, S.D. 1 (2016), requested the establishment of a task force to  
13 study effective incarceration policies to improve Hawaii's  
14 correctional system. The interim report of the task force,  
15 which was dated February 2017 and provided to the legislature,  
16 included an observation by the Vera Institute of Justice that  
17 the prevalence of incarcerated people having mental illness is  
18 at odds with the design, operation, and resources of most  
19 correctional facilities. Studies show that the detrimental  
20 effects of solitary confinement far exceed the immediate  
21 psychological consequences identified by previous research, such



1 as anxiety, depression, and hallucinations. Unfortunately,  
2 these detrimental effects do not disappear once an inmate is  
3 released from solitary confinement. Even after release back  
4 into a community setting, a former inmate faces an elevated risk  
5 of suicide, drug overdose, heart attack, and stroke.

6 The legislature recognizes that in 2019, twenty-eight  
7 states introduced legislation to ban or restrict the use of  
8 solitary confinement. Further, twelve states have passed reform  
9 legislation: Arkansas, Connecticut, Georgia, Maryland,  
10 Minnesota, Montana, Nebraska, New Jersey, New Mexico, Texas,  
11 Washington, and Virginia. Some of these new laws, such as those  
12 enacted by Connecticut and Washington, reflect tentative and  
13 piecemeal approaches to change. However, most of the new laws  
14 represent significant reforms to existing practices and thus  
15 have the potential to facilitate more humane and effective  
16 practices in prisons and jails.

17 The legislature further finds that the revised United  
18 Nations Standard Minimum Rules for the Treatment of Prisoners,  
19 also known as "the Nelson Mandela Rules" to honor the legacy of  
20 the late South African president, are based upon an obligation  
21 to treat all prisoners with respect for their inherent dignity



1 and value as human beings. The rules prohibit torture and other  
2 forms of maltreatment. Notably, the rules also restrict the use  
3 of solitary confinement as a measure of last resort, to be used  
4 only in exceptional circumstances. Moreover, the rules prohibit  
5 the use of solitary confinement for a time period exceeding  
6 fifteen consecutive days and characterize this disciplinary  
7 sanction as a form of "torture or other cruel, inhuman or  
8 degrading treatment or punishment". Indeed, Nelson Mandela said  
9 he found solitary confinement to be "the most forbidding aspect  
10 of prison life" and stated that "[t]here was no end and no  
11 beginning; there's only one's own mind, which can begin to play  
12 tricks."

13 Accordingly, the purpose of this Act is to:

- 14 (1) Prohibit indefinite solitary confinement;
- 15 (2) Prohibit prolonged solitary confinement;
- 16 (3) Prohibit placement of an inmate in a dark or  
17 constantly lit cell;
- 18 (4) Restrict the use of solitary confinement in  
19 state-operated and state-contracted correctional  
20 facilities, with certain specified exceptions;



1 (5) Prohibit inmates incarcerated or detained in  
2 state-operated or state-contracted correctional  
3 facilities from being placed in solitary confinement,  
4 unless there is reasonable cause to believe that an  
5 inmate or other persons would be at substantial risk  
6 of immediate serious harm as evidenced by recent  
7 threats or conduct, and that a less restrictive  
8 intervention would be insufficient to reduce this  
9 risk; and

10 (6) Prohibit the use of solitary confinement for a member  
11 of a vulnerable population.

12 SECTION 2. Chapter 353, Hawaii Revised Statutes, is  
13 amended by adding a new section to part I to be appropriately  
14 designated and to read as follows:

15 "§353- Solitary confinement; restrictions on use;  
16 policies and procedures. (a) The use of solitary confinement  
17 in correctional facilities shall be restricted as follows:

18 (1) Except as otherwise provided in subsection (d), an  
19 inmate shall not be placed in solitary confinement  
20 unless there is reasonable cause to believe that the  
21 inmate would create a substantial risk of immediate



1           serious harm to the inmate's self or another, as  
2           evidenced by recent threats or conduct, and that a  
3           less restrictive intervention would be insufficient to  
4           reduce this risk; provided that the correctional  
5           facility shall bear the burden of establishing the  
6           foregoing by clear and convincing evidence;

7           (2) Except as otherwise provided in subsection (d), an  
8           inmate shall not be placed in solitary confinement for  
9           non-disciplinary reasons;

10          (3) Except as otherwise provided in subsection (d), an  
11          inmate shall not be placed in solitary confinement  
12          before receiving a personal and comprehensive medical  
13          and mental health examination conducted by a  
14          clinician;

15          (4) Except as otherwise provided in subsection (d), an  
16          inmate shall only be held in solitary confinement  
17          pursuant to initial procedures and reviews that  
18          provide timely, fair, and meaningful opportunities for  
19          the inmate to contest the confinement. These  
20          procedures and reviews shall include the right to:



- 1           (A) An initial hearing held within seventy-two hours  
2           of placement in solitary confinement and a review  
3           every fifteen days thereafter, in the absence of  
4           exceptional circumstances, unavoidable delays, or  
5           reasonable postponements;
- 6           (B) Appear at the hearing;
- 7           (C) Be represented at the hearing;
- 8           (D) An independent hearing officer; and
- 9           (E) Receive a written statement of reasons for the  
10          decision made at the hearing;
- 11        (5) Except as otherwise provided in subsection (d), the  
12        final decision to place an inmate in solitary  
13        confinement shall be made by the warden or the  
14        warden's designee;
- 15        (6) Except as otherwise provided in this subsection or in  
16        subsection (d), an inmate shall not be placed or held  
17        in solitary confinement if the warden or the warden's  
18        designee determines that the inmate no longer meets  
19        the criteria for the confinement;
- 20        (7) A clinician shall evaluate on a daily basis each  
21        inmate who has been placed in solitary confinement, in



1 a confidential setting outside of the inmate's cell  
2 whenever possible, to determine whether the inmate is  
3 a member of a vulnerable population. Except as  
4 otherwise provided in subsection (d), an inmate  
5 determined to be a member of a vulnerable population  
6 shall be immediately removed from solitary confinement  
7 and moved to an appropriate placement elsewhere;

8 (8) A disciplinary sanction of solitary confinement  
9 imposed on an inmate who is subsequently removed from  
10 solitary confinement pursuant to this subsection shall  
11 be deemed completed;

12 (9) Except as otherwise provided in subsection (d), during  
13 a facility-wide lockdown, an inmate shall not be  
14 placed in solitary confinement for more than fifteen  
15 consecutive days, or for more than twenty days total  
16 during any sixty-day period;

17 (10) Cells or other holding or living space used for  
18 solitary confinement shall be properly ventilated,  
19 lit, temperature-controlled, clean, and equipped with  
20 properly functioning sanitary fixtures;



- 1        (11) A correctional facility shall maximize the amount of  
2        time spent outside of the cell by an inmate held in  
3        solitary confinement by providing the inmate with  
4        access to recreation, education, clinically  
5        appropriate treatment therapies, skill-building  
6        activities, and social interaction with staff and  
7        other inmates, as appropriate;
- 8        (12) An inmate held in solitary confinement shall not be  
9        denied access to food, water, or any other necessity;
- 10       (13) An inmate held in solitary confinement shall not be  
11       denied access to appropriate medical care, including  
12       emergency medical care; and
- 13       (14) An inmate shall not be released directly from solitary  
14       confinement to the community during the final one  
15       hundred eighty days of the inmate's term of  
16       incarceration, unless necessary for the safety of the  
17       inmate, staff, other inmates, or the public.
- 18       (b) Except as otherwise provided in subsection (d), an  
19       inmate who is a member of a vulnerable population shall not be  
20       placed in solitary confinement; provided that:



# S.B. NO. 347

- 1        (1) An inmate who is a member of a vulnerable population  
2        because the inmate is twenty-one years of age or  
3        younger, has a disability based on mental illness, or  
4        has a developmental disability:
- 5        (A) Shall not be subject to discipline for refusing  
6        treatment or medication, or for engaging in  
7        self-harm or related conduct or threatening to do  
8        so; and
- 9        (B) Shall be screened by a correctional facility  
10       clinician or the appropriate screening service  
11       pursuant to the Hawaii administrative rules and,  
12       if found to meet the criteria for civil  
13       commitment, shall be placed in a specialized unit  
14       designated by the director or deputy director of  
15       the department, or civilly committed to the least  
16       restrictive appropriate short-term care or  
17       psychiatric facility designated by the department  
18       of health; but only if the inmate would otherwise  
19       have been placed in solitary confinement; and
- 20       (2) An inmate who is a member of a vulnerable population  
21       because the inmate is sixty years of age or older; has



1           a serious medical condition that cannot be effectively  
2           treated while the inmate is in solitary confinement;  
3           or is pregnant, in the postpartum period, or recently  
4           suffered a miscarriage or terminated a pregnancy,  
5           shall alternately be placed in an appropriate medical  
6           or other unit designated by the director, but only if  
7           the inmate would otherwise have been placed in  
8           solitary confinement.

9           (c) An inmate shall not be placed in solitary confinement  
10          or in any other cell or other holding or living space, in any  
11          facility, whether alone or with one or more other inmates, if  
12          there is reasonable cause to believe that there exists a risk of  
13          harm or harassment, intimidation, extortion, or other physical  
14          or emotional abuse to the inmate or to another inmate in that  
15          placement.

16          (d) The use of solitary confinement in correctional  
17          facilities shall be permitted only under the following limited  
18          circumstances:

19           (1) The warden or the warden's designee determines that a  
20           facility-wide lockdown is necessary to ensure the  
21           safety of inmates in the facility, until the facility



1 administrator determines that the threat to inmate  
2 safety no longer exists. The warden or the warden's  
3 designee shall document the specific reasons that any  
4 facility-wide lockdown was necessary for more than  
5 twenty-four hours, and the specific reasons that less  
6 restrictive interventions were insufficient to  
7 accomplish the facility's safety goals. Within six  
8 hours of a decision to extend a facility-wide lockdown  
9 beyond twenty-four hours, the director or deputy  
10 director of the department shall publish the foregoing  
11 reasons on the department's website and shall provide  
12 meaningful notice to the legislature of the reasons  
13 for the lockdown;

14 (2) The warden or the warden's designee determines that an  
15 inmate should be placed in emergency confinement;  
16 provided that:

17 (A) An inmate shall not be held in emergency  
18 confinement for more than twenty-four hours; and

19 (B) An inmate placed in emergency confinement shall  
20 receive an initial medical and mental health  
21 evaluation within six hours and a personal and



1           comprehensive medical and mental health  
2           examination conducted by a clinician within  
3           twenty-four hours. Reports of these evaluations  
4           shall be immediately provided to the warden or  
5           the warden's designee;

6       (3) A physician, based upon the physician's personal  
7       examination of an inmate, determines that the inmate  
8       should be placed or held in medical isolation;  
9       provided that any decision to place or hold an inmate  
10      in medical isolation due to a mental health emergency  
11      shall be made by a clinician and based upon the  
12      clinician's personal examination of the inmate. In  
13      any case of medical isolation occurring under this  
14      paragraph, a clinical review shall be conducted at  
15      least every six hours and as clinically indicated. An  
16      inmate in medical isolation pursuant to this paragraph  
17      shall be placed in a mental health unit designated by  
18      the director or deputy director of the department;

19      (4) The warden or the warden's designee determines that an  
20      inmate should be placed in protective custody;  
21      provided that:



1           (A) An inmate may be placed in voluntary protective  
2           custody only when the inmate has provided  
3           voluntary, informed, and written consent and  
4           there is reasonable cause to believe that  
5           confinement is necessary to prevent reasonably  
6           foreseeable harm. When an inmate makes a  
7           voluntary, informed, and written request to be  
8           placed in protective custody and the request is  
9           denied, the correctional facility shall bear the  
10          burden of establishing a basis for denying the  
11          request;

12          (B) An inmate may be placed in involuntary protective  
13          custody only when the correctional facility is  
14          able to establish by clear and convincing  
15          evidence that confinement is necessary to prevent  
16          reasonably foreseeable harm and that a less  
17          restrictive intervention would be insufficient to  
18          prevent the harm;

19          (C) An inmate placed in protective custody shall be  
20          provided opportunities for activities, movement,  
21          and social interaction, in a manner consistent



1           with ensuring the inmate's safety and the safety  
2           of other persons, that are comparable to the  
3           opportunities provided to inmates in the  
4           facility's general population;

5           (D) An inmate subject to removal from protective  
6           custody shall be provided with a timely, fair,  
7           and meaningful opportunity to contest the  
8           removal;

9           (E) An inmate who is currently or may be placed in  
10           voluntary protective custody may opt out of that  
11           status by providing voluntary, informed, and  
12           written refusal of that status; and

13           (F) Before placing an inmate in protective custody,  
14           the warden or the warden's designee shall use a  
15           less restrictive intervention, including transfer  
16           to the general population of another facility or  
17           to a special-purpose housing unit for inmates who  
18           face similar threats, unless the inmate poses an  
19           extraordinary security risk so great that  
20           transferring the inmate would be insufficient to  
21           ensure the inmate's safety; and



1       (5) The warden or the warden's designee determines that an  
2       inmate should be placed in solitary confinement  
3       pending investigation of an alleged disciplinary  
4       offense; provided that:

5       (A) The inmate's placement in solitary confinement is  
6       pursuant to approval granted by the warden or the  
7       warden's designee in an emergency situation, or  
8       is because the inmate's presence in the  
9       facility's general population while the  
10       investigation is ongoing poses a danger to the  
11       inmate, staff, other inmates, or the public;  
12       provided further that the determination of danger  
13       shall be based upon a consideration of the  
14       seriousness of the inmate's alleged offense,  
15       including whether the offense involved violence  
16       or escape, or posed a threat to institutional  
17       safety by encouraging other persons to engage in  
18       misconduct;

19       (B) An inmate's placement in solitary confinement  
20       pending investigation of an alleged disciplinary  
21       offense shall be reviewed within twenty-four



1           hours by a supervisory-level employee who was not  
2           involved in the initial placement decision; and  
3       (C) An inmate who has been placed in solitary  
4           confinement pending investigation of an alleged  
5           disciplinary offense shall be considered for  
6           release to the facility's general population if  
7           the inmate demonstrates good behavior while in  
8           solitary confinement. If the inmate is found  
9           guilty of the disciplinary offense, the inmate's  
10          good behavior shall be considered when  
11          determining the appropriate penalty for the  
12          offense.

13       (e) No later than July 1, 2024, the department shall have  
14       developed written policies and implemented procedures, as  
15       necessary and appropriate, to effectuate this section,  
16       including:

17       (1) Establishing less restrictive interventions as  
18       alternatives to solitary confinement, including  
19       separation from other inmates, transfer to other  
20       correctional facilities, and any other sanction not  
21       involving solitary confinement that is authorized by



1 the department's policies and procedures; provided  
2 that any temporary restrictions on an inmate's  
3 privileges or access to resources, including religious  
4 services, mail and telephone privileges, visitation by  
5 contacts, and outdoor or recreation access, shall be  
6 imposed only when necessary to ensure the safety of  
7 the inmate or other persons, and shall not restrict  
8 the inmate's access to food, basic necessities, or  
9 legal assistance;

10 (2) Requiring periodic training of disciplinary staff and  
11 all other staff who interact with inmates held in  
12 solitary confinement; provided that the training:

13 (A) Is developed and conducted with assistance from  
14 appropriately trained and qualified  
15 professionals;

16 (B) Clearly communicates the applicable standards for  
17 solitary confinement, including the standards set  
18 forth in this section; and

19 (C) Provides information on the identification of  
20 developmental disabilities; symptoms of mental



- 1           illness, including trauma disorders; and methods
- 2           for responding safely to persons in distress;
- 3       (3) Requiring documentation of all decisions, procedures,
- 4           and reviews of inmates placed in solitary confinement;
- 5       (4) Requiring monitoring of compliance with all rules
- 6           governing cells, units, and other spaces used for
- 7           solitary confinement;
- 8       (5) Requiring the posting of quarterly reports on the
- 9           department's official website that:
- 10       (A) Describe the nature and extent of each
- 11           correctional facility's use of solitary
- 12           confinement and include data on the age, sex,
- 13           gender identity, ethnicity, incidence of mental
- 14           illness, and type of confinement status for
- 15           inmates placed in solitary confinement;
- 16       (B) Include the inmate population as of the last day
- 17           of each quarter and a non-duplicative, cumulative
- 18           count of the number of inmates placed in solitary
- 19           confinement during the fiscal year;
- 20       (C) Include the incidence of emergency confinement,
- 21           self-harm, suicide, and assault in any solitary



1           confinement unit, as well as explanations for  
2           each instance of facility-wide lockdown; and

3           (D) Exclude personally identifiable information  
4           regarding any inmate; and

5           (6) Updating the department's corrections administration  
6           policy and procedures manual, as necessary and  
7           appropriate, to comply with the provisions of this  
8           section, including the requirement to use appropriate  
9           alternatives to solitary confinement for inmates who  
10           are members of a vulnerable population.

11           (f) As used in this section:

12           "Correctional facility" means a state prison, other penal  
13           institution, or an institution or facility designated by the  
14           department as a place of confinement under this chapter. The  
15           term includes community correctional centers, high-security  
16           correctional facilities, temporary correctional facilities, in-  
17           state correctional facilities, state-contracted correctional  
18           facilities operated by private entities, and jails maintained by  
19           county police departments.

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

21           (1) Is twenty-one years of age or younger;



- 1        (2) Is sixty years of age or older;
- 2        (3) Has a physical or mental disability, a history of
- 3        psychiatric hospitalization, or recently exhibited
- 4        conduct, including serious self-mutilation, that
- 5        indicates the need for further observation or
- 6        evaluation to determine the presence of mental
- 7        illness;
- 8        (4) Has a developmental disability, as defined in section
- 9        333F-1;
- 10       (5) Has a serious medical condition that cannot be
- 11       effectively treated while the inmate is in solitary
- 12       confinement;
- 13       (6) Is pregnant, in the postpartum period, or recently
- 14       suffered a miscarriage or terminated a pregnancy;
- 15       (7) Has a significant auditory or visual impairment; or
- 16       (8) Is perceived to be lesbian, gay, bisexual,
- 17       transgender, or intersex.

18        "Solitary confinement" occurs when all of the following  
19        conditions are present:



- 1        (1) An inmate is confined in a correctional facility
- 2                pursuant to disciplinary, administrative, protective,
- 3                investigative, medical, or other purposes;
- 4        (2) The confinement occurs in a cell or similarly
- 5                physically restrictive holding or living space,
- 6                whether alone or with one or more other inmates, for
- 7                twenty hours or more per day; and
- 8        (3) The inmate's activities, movements, and social
- 9                interactions are severely restricted."

10        SECTION 3. No later than April 1, 2024, the department of  
11 corrections and rehabilitation shall:

- 12        (1) Develop written policies and implement procedures, as
- 13                necessary and appropriate, for the review of inmates
- 14                placed in solitary confinement;
- 15        (2) Initiate a review of each inmate placed in solitary
- 16                confinement during the immediately preceding fiscal
- 17                year to determine whether the placement would be
- 18                appropriate in light of the requirements of section
- 19                353-        , Hawaii Revised Statutes; and
- 20        (3) Develop a plan for providing step-down and
- 21                transitional units, programs, and staffing patterns to



1 accommodate inmates currently placed in solitary  
2 confinement, inmates who may prospectively be placed  
3 in solitary confinement, and inmates who receive an  
4 intermediate sanction in lieu of being placed in  
5 solitary confinement; provided that staffing patterns  
6 for correctional and program staff are set at levels  
7 necessary to ensure the safety of staff and inmates  
8 pursuant to the requirements of this Act.

9 SECTION 4. No later than forty days prior to the convening  
10 of the regular session of 2025, the department of corrections  
11 and rehabilitation shall submit to the legislature a status  
12 report of the department's progress toward full compliance with  
13 this Act, along with draft copies of written policies and  
14 procedures undertaken pursuant to this Act.

15 SECTION 5. New statutory material is underscored.

16 SECTION 6. This Act shall take effect upon its approval;  
17 provided that section 2 shall take effect on July 1, 2024.

INTRODUCED BY: Kal Nehrk



# S.B. NO. 347

**Report Title:**

Department of Corrections and Rehabilitation; Correctional Facilities; Inmates; Solitary Confinement; Restrictions; Vulnerable Populations; Report

**Description:**

Restricts the use of solitary confinement in state-operated and state-contracted correctional facilities, with certain specified exceptions. Requires the Department of Corrections and Rehabilitation to use appropriate alternatives to solitary confinement for inmates who are members of a vulnerable population. Requires the department to develop written policies and implement procedures by 7/1/2024. Defines "member of a vulnerable population." Requires a report to the Legislature.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

