

MAR 06 2020

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# SENATE CONCURRENT RESOLUTION

REQUESTING ANNUAL REPORTS ON THE SEGREGATION AND SOLITARY  
CONFINEMENT OF INDIVIDUALS IN CORRECTIONAL FACILITIES AND A  
PLAN TO CEASE THE IMPOSITION OF SOLITARY CONFINEMENT ON  
MEMBERS OF VULNERABLE POPULATIONS.

1           WHEREAS, segregation of a correctional facility inmate  
2 means confinement in a cell that is separated from the general  
3 inmate population; and  
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5           WHEREAS, administrative segregation means the temporary  
6 segregation of an inmate, on the order of a watch commander or  
7 higher authority, when the inmate's continued presence in the  
8 general inmate population presents an immediate threat to the  
9 safety of the inmate or others, jeopardizes the integrity of an  
10 investigation of alleged serious misconduct or criminal  
11 activity, or endangers institutional security; and  
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13           WHEREAS, disciplinary segregation means the segregation of  
14 an inmate by placement of the inmate in a designated segregation  
15 housing unit in a cell separated from the general inmate  
16 population after the inmate is found guilty of a misconduct  
17 violation and issued a sanction by a formal adjustment committee  
18 hearing; and  
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20           WHEREAS, disciplinary segregation includes the loss of  
21 certain privileges as authorized by appropriate authorities; and  
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23           WHEREAS, solitary confinement is a form of segregation that  
24 confines an inmate alone for twenty-two hours or more in any  
25 given day without meaningful human contact; and  
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27           WHEREAS, the use of solitary confinement was introduced to  
28 Hawaii by the United States, which began using it in the early  
29 nineteenth century; and  
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1           WHEREAS, a stated intention for the use of isolation at  
2 that time, as at present in Hawaii, was to rehabilitate  
3 prisoners; and  
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5           WHEREAS, in 1890, the United States Supreme Court noted  
6 that solitary confinement was ineffective for prisoner safety  
7 and caused a concerning number of prisoners to become "semi-  
8 fatuous", or somewhat demented; and  
9

10           WHEREAS, in December 2015, the United Nations adopted "The  
11 Nelson Mandela Rules", which provide a set of guidelines for the  
12 proper treatment of prisoners; and  
13

14           WHEREAS, the Nelson Mandela Rules are particularly critical  
15 of indefinite solitary confinement and prolonged solitary  
16 confinement, which are classified among "torture or other cruel,  
17 inhuman or degrading" treatments and punishments; and  
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19           WHEREAS, the Nelson Mandela Rules recommend prohibiting  
20 prolonged solitary confinement, which the rules consider as  
21 solitary confinement for a time period in excess of fifteen  
22 consecutive days; and  
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24           WHEREAS, the Nelson Mandela Rules also recommend  
25 prohibiting indefinite solitary confinement; and  
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27           WHEREAS, the United Nations Special Rapporteur, who helped  
28 to ensure that the aforementioned recommendations on prolonged  
29 solitary confinement and indefinite solitary confinement were  
30 included in the Nelson Mandela Rules, also noted that fifteen  
31 days of solitary confinement are more than twice the amount of  
32 time that, according to some studies, can have a "long-term  
33 psychological impact" on people; and  
34

35           WHEREAS, the Nelson Mandela Rules recommend prohibiting  
36 solitary confinement for individuals having mental disabilities  
37 when their conditions would be exacerbated by that confinement;  
38 and  
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40           WHEREAS, the Nelson Mandela Rules reaffirm other United  
41 Nations standards that recommend prohibitions on the use of  
42 solitary confinement on juveniles; and



1 WHEREAS, since 2017, an alarming number of individuals in  
2 Hawaii correctional facilities, after spending time in solitary  
3 confinement or other types of inmate segregation, have committed  
4 suicide shortly after their returns to the general inmate  
5 population; and

6  
7 WHEREAS, in January 2016, the United States Department of  
8 Justice released a report on restrictive housing that included  
9 individuals with mental illness and juveniles among those who  
10 warranted special consideration, and included the former among  
11 vulnerable populations; and

12  
13 WHEREAS, the Legislature finds that members of a vulnerable  
14 population should not be isolated from human contact for any  
15 reason, and among those vulnerable individuals are persons:

- 16  
17 (1) Twenty-one years of age or younger;  
18  
19 (2) Sixty-five years of age or older;  
20  
21 (3) Who have a mental or physical disability, a history of  
22 psychiatric hospitalization, or have recently  
23 exhibited conduct, including serious self-mutilation,  
24 indicating the need for further observation or  
25 evaluation to determine the presence of mental  
26 illness;  
27  
28 (4) Who have a developmental disability;  
29  
30 (5) Who have significant auditory or visual impairment;  
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32 (6) Who have a serious medical condition that cannot be  
33 effectively treated in isolated confinement;  
34  
35 (7) Who are pregnant, are in the postpartum period, or  
36 have recently suffered a miscarriage or terminated  
37 pregnancy; or  
38  
39 (8) Who are perceived to be lesbian, gay, bisexual,  
40 transgender, or intersex; and  
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1 WHEREAS, the Legislature is cognizant of the State's  
2 responsibility and liability for the care of individuals in the  
3 custody of the State; and  
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5 WHEREAS, Article 1 of the Convention against Torture and  
6 Other Cruel, Inhuman or Degrading Treatment or Punishment, which  
7 has been ratified by and is legally binding on the United  
8 States, defines "torture" in part as "any act by which severe  
9 pain or suffering, whether physical or mental, is intentionally  
10 inflicted on a person for such purposes as . . . punishing him  
11 for an act he or are third person has committed or is suspected  
12 of having committed"; and  
13

14 WHEREAS, it is the Legislature's responsibility to prevent  
15 segregation and solitary confinement from becoming forms of  
16 torture and to understand how policies on segregation and  
17 solitary confinement are being implemented; now, therefore,  
18

19 BE IT RESOLVED by the Senate of the Thirtieth Legislature  
20 of the State of Hawaii, Regular Session of 2020, the House of  
21 Representatives concurring, that the Corrections Division of the  
22 Department of Public Safety and the Hawaii Youth Correctional  
23 Facilities of the Department of Human Services are requested to  
24 submit to the Governor and to the Legislature no later than  
25 twenty days prior to the convening of the Regular Sessions of  
26 2021 and each year thereafter a joint report on segregation and  
27 solitary confinement; and  
28

29 BE IT FURTHER RESOLVED that it is requested that each  
30 annual report submitted to the Governor and the Legislature  
31 include aggregated data from the most recently completed fiscal  
32 year on:  
33

- 34 (1) The number of individuals who were sent to  
35 administrative or disciplinary segregation, and the  
36 number from among those individuals who were placed in  
37 solitary confinement;  
38
- 39 (2) The number of individuals sent to administrative or  
40 disciplinary segregation who were members of  
41 vulnerable populations, and the number from among



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those individuals who were placed in solitary confinement;

(3) The reasons why individuals were sent to administrative or disciplinary segregation and, if applicable, placed in solitary confinement;

(4) The number of individuals who were sent to administrative or disciplinary segregation more than once, the total number of times those individuals were placed in administrative or disciplinary segregation, and corresponding statistics on their placement in solitary confinement, if applicable;

(5) The amount of time that individuals remained in administrative or disciplinary segregation or solitary confinement; and

(6) Alternatives used to avoid administrative or disciplinary segregation or solitary confinement; and

BE IT FURTHER RESOLVED that it is requested that each annual report submitted to the Governor and the Legislature also include a plan and the status of implementation of that plan to cease the imposition of solitary confinement upon members of vulnerable populations; and

BE IT FURTHER RESOLVED that certified copies of this Concurrent Resolution be transmitted to the Governor; Director of Public Safety; Director of Human Services; Deputy Director of the Corrections Division, Department of Public Safety; and Executive Director of the Office of Youth Services, Department of Human Services.

34 *Algeria*

35 *R. E. B.*

36 OFFERED BY: *Clarence K. Chick*

*George L. Brown* *Randy H. Baker*

*DKA* *Karl R. ...*

*...* *...*

