

MAR 06 2020

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
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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
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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
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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

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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;
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19 (2) Sixty-five years of age or older;
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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;
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28 (4) Who have a developmental disability;
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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;
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35 (7) Who are pregnant, are in the postpartum period, or
36 have recently suffered a miscarriage or terminated
37 pregnancy; or
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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

4
 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,

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 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;
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 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. ...*

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