

JAN 26 2022

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 feel 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,
12 House Draft 2, Senate Draft 1 (2016), requested the
13 establishment of a task force to study effective incarceration
14 policies to improve Hawaii's correctional system. The interim
15 report of the task force, which was dated February 2017 and
16 provided to the legislature, included an observation by the Vera
17 Institute of Justice that the prevalence of incarcerated people
18 having mental illness is at odds with the design, operation, and
19 resources of most correctional facilities. Studies show that
20 the detrimental effects of solitary confinement far exceed the
21 immediate psychological consequences identified by previous



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

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

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



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

14 Accordingly, the purpose of this Act is to:

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



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

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

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

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

(1) Except as otherwise provided in subsection (d), an inmate shall not be placed in solitary confinement unless there is reasonable cause to believe that the 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:



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, 2023, 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) Do not include personally identifiable
4 information 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 of public safety as a place of confinement under
15 chapter 353. The term includes community correctional centers,
16 high-security correctional facilities, temporary correctional
17 facilities, in-state correctional facilities, state-contracted
18 correctional facilities operated by private entities, and jails
19 maintained by 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, 2023, the department of
11 public safety 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 twenty days prior to the
10 convening of the regular session of 2023, the department of
11 public safety shall submit to the legislature a status report of
12 the department's progress toward full compliance with this Act,
13 along with any draft copies of written policies and procedures
14 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, 2023.

18
INTRODUCED BY: Clarence K. Rushen



S.B. NO. 3344

Report Title:

PSD; 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 Public Safety to use appropriate alternatives to solitary confinement for inmates who are members of a vulnerable population. 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.

