
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, including 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) Restrict the use of solitary confinement in state-
15 operated and state-contracted correctional facilities,
16 with certain specified exceptions;
- 17 (2) Require the department of corrections and
18 rehabilitation to develop written policies and
19 procedures regarding solitary confinement by July 1,
20 2025;



1 (3) Requires the Hawaii correctional system oversight
2 commission to review certain housing placements;

3 (4) Require the department of corrections and
4 rehabilitation to develop policies and procedures to
5 review committed persons placed in solitary
6 confinement and develop a plan for committed persons
7 currently in solitary confinement by April 1, 2025;
8 and

9 (5) Require a report to the legislature and Hawaii
10 correctional system oversight commission.

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

14 "§353- Solitary confinement; restrictions on use;
15 policies and procedures. (a) The use of solitary confinement
16 in correctional facilities shall be restricted as follows:

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



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

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

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

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



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



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

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

12 (9) Except as otherwise provided in subsection (d), during
13 a facility-wide lockdown, a committed person shall not
14 be placed in solitary confinement for more than
15 fifteen consecutive days, or for more than twenty days
16 total 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 a committed person
3 held in solitary confinement by providing the
4 committed person with access to recreation, education,
5 clinically appropriate treatment therapies, skill-
6 building activities, and social interaction with staff
7 and other committed persons, as appropriate;
- 8 (12) A committed person held in solitary confinement shall
9 not be denied access to:
- 10 (A) Food, water, or any other necessity; and
11 (B) Appropriate medical care, including emergency
12 medical care;
- 13 (13) Each committed person held in solitary confinement
14 shall be given a written copy of the committed
15 person's sanction and the criteria for a pathway back
16 into the general population. The department shall
17 ensure that the committed person understands the
18 reason for the sanction and the criteria for the
19 pathway back into the general population. The
20 committed person's case manager shall work with the
21 committed person in solitary confinement to develop a



1 plan of action to reduce the committed person's
2 violations, return to the general population, and work
3 on the committed person's rehabilitation; and

4 (14) A committed person shall not be released directly from
5 solitary confinement to the community during the final
6 one hundred eighty days of the committed person's term
7 of incarceration, unless necessary for the safety of
8 the committed person, staff, other committed persons,
9 or the public.

10 (b) Except as otherwise provided in subsection (d), a
11 committed person who is a member of a vulnerable population
12 shall not be placed in solitary confinement; provided that a
13 committed person who is a member of a vulnerable population
14 because:

15 (1) The committed person is twenty-one years of age or
16 younger, has a disability based on mental illness, or
17 has a developmental disability:

18 (A) Shall not be subject to discipline for refusing
19 treatment or medication, or for engaging in
20 self-harm or related conduct or threatening to do
21 so; and



1 (B) Shall be screened by a correctional facility
2 clinician or the appropriate screening service
3 pursuant to rules and, if found to meet the
4 criteria for civil commitment, shall be placed in
5 a specialized unit designated by the director or
6 deputy director of the department, or civilly
7 committed to the least restrictive appropriate
8 short-term care or psychiatric facility
9 designated by the department of health, but only
10 if the committed person would otherwise have been
11 placed in solitary confinement; and

12 (2) The committed person is sixty years of age or older;
13 has a serious medical condition that cannot be
14 effectively treated while the committed person is in
15 solitary confinement; or is pregnant, in the
16 postpartum period, or recently suffered a miscarriage
17 or terminated a pregnancy, shall alternately be placed
18 in an appropriate medical or other unit designated by
19 the director or deputy director of the department, but
20 only if the committed person would otherwise have been
21 placed in solitary confinement.



1 (c) A committed person shall not be placed in solitary
2 confinement or in any other cell or other holding or living
3 space, in any facility, whether alone or with one or more other
4 committed persons, if there is reasonable cause to believe that
5 there exists a risk of harm, harassment, intimidation,
6 extortion, or other physical or emotional abuse to the committed
7 person or to another committed person in that placement.

8 (d) The use of solitary confinement in correctional
9 facilities shall be permitted only under the following limited
10 circumstances:

11 (1) The warden or the warden's designee determines that a
12 facility-wide lockdown is necessary to ensure the
13 safety of committed persons in the facility, until the
14 warden or the warden's designee determines that the
15 threat to committed person safety no longer exists.
16 The warden or the warden's designee shall document the
17 specific reasons that any facility-wide lockdown was
18 necessary for more than twenty-four hours, and the
19 specific reasons that less restrictive interventions
20 were insufficient to accomplish the facility's safety
21 goals. Within six hours of a decision to extend a



1 facility-wide lockdown beyond twenty-four hours, the
2 director or deputy director of the department shall
3 publish the foregoing reasons on the department's
4 website and shall provide meaningful notice to the
5 legislature of the reasons for the lockdown;

6 (2) The warden or the warden's designee determines that a
7 committed person should be placed in emergency
8 confinement; provided that:

9 (A) A committed person shall not be held in emergency
10 confinement for more than twenty-four hours; and

11 (B) A committed person placed in emergency
12 confinement shall receive an initial medical and
13 mental health evaluation within six hours and a
14 personal and comprehensive medical and mental
15 health examination conducted by a clinician
16 within twenty-four hours. Reports of these
17 evaluations shall be immediately provided to the
18 warden or the warden's designee;

19 (3) A physician, based upon the physician's personal
20 examination of a committed person, determines that the
21 committed person should be placed or held in medical



1 isolation; provided that any decision to place or hold
2 a committed person in medical isolation due to a
3 mental health emergency shall be made by a clinician
4 and based upon the clinician's personal examination of
5 the committed person. In any case of medical
6 isolation occurring under this paragraph, a clinical
7 review shall be conducted at least every six hours and
8 as clinically indicated. A committed person in
9 medical isolation due to a mental health emergency
10 pursuant to this paragraph shall be placed in a mental
11 health unit designated by the director or deputy
12 director of the department;
13 (4) The warden or the warden's designee determines that a
14 committed person should be placed in protective
15 custody; provided that:
16 (A) A committed person may be placed in voluntary
17 protective custody only when the committed person
18 has provided voluntary, informed, and written
19 consent and there is reasonable cause to believe
20 that protective custody is necessary to prevent
21 reasonably foreseeable harm. When a committed



1 person makes a voluntary, informed, and written
2 request to be placed in protective custody and
3 the request is denied, the correctional facility
4 shall bear the burden of establishing a basis for
5 denying the request;

6 (B) A committed person may be placed in involuntary
7 protective custody only when the correctional
8 facility is able to establish by clear and
9 convincing evidence that protective custody is
10 necessary to prevent reasonably foreseeable harm
11 and that a less restrictive intervention would be
12 insufficient to prevent the harm;

13 (C) A committed person placed in protective custody
14 shall be provided opportunities for activities,
15 movement, and social interaction, in a manner
16 consistent with ensuring the committed person's
17 safety and the safety of other persons, that are
18 comparable to the opportunities provided to
19 committed persons in the facility's general
20 population;



- 1 (D) A committed person subject to removal from
2 protective custody shall be provided with a
3 timely, fair, and meaningful opportunity to
4 contest the removal;
- 5 (E) A committed person who is currently or may be
6 placed in voluntary protective custody may opt
7 out of that status by providing voluntary,
8 informed, and written refusal of that status; and
- 9 (F) Before placing a committed person in protective
10 custody, the warden or the warden's designee
11 shall use a less restrictive intervention,
12 including transfer to the general population of
13 another facility or to a special-purpose housing
14 unit for committed persons who face similar
15 threats, unless the committed person poses an
16 extraordinary security risk so great that
17 transferring the committed person would be
18 insufficient to ensure the committed person's
19 safety; and
- 20 (5) The warden or the warden's designee determines that a
21 committed person should be placed in solitary



1 confinement pending investigation of an alleged
2 disciplinary offense; provided that:

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

18 (B) The committed person's placement in solitary,
19 disciplinary, or administrative segregation shall
20 not revert to another form of segregation after
21 the initial sanction has been served;



1 (C) A committed person's placement in solitary
2 confinement pending investigation of an alleged
3 disciplinary offense shall be reviewed within
4 twenty-four hours by a supervisory-level employee
5 who was not involved in the initial placement
6 decision; and

7 (D) A committed person who has been placed in
8 solitary confinement pending investigation of an
9 alleged disciplinary offense shall be considered
10 for release to the facility's general population
11 if the committed person demonstrates good
12 behavior while in solitary confinement. If the
13 committed person is found guilty of the
14 disciplinary offense, the committed person's good
15 behavior shall be considered when determining the
16 appropriate penalty for the offense.

17 (e) No later than July 1, 2025, the department shall
18 develop written policies and implement procedures, as necessary
19 and appropriate, to effectuate this section, including:

20 (1) Establishing less restrictive interventions as
21 alternatives to solitary confinement, including

1 separation from other committed persons, transfer to
2 other correctional facilities, and any other sanction
3 not involving solitary confinement that is authorized
4 by the department's policies and procedures; provided
5 that any temporary restrictions on an committed
6 person's privileges or access to resources, including
7 religious services, mail and telephone privileges,
8 visitation by contacts, and outdoor or recreation
9 access, shall be imposed only when necessary to ensure
10 the safety of the committed person or other persons,
11 and shall not restrict the committed person's access
12 to food, basic necessities, or legal assistance;
13 (2) Requiring periodic training of disciplinary staff and
14 all other staff who interact with committed persons
15 held in solitary confinement; provided that the
16 training:
17 (A) Is developed and conducted with assistance from
18 appropriately trained and qualified
19 professionals;



- 1 (B) Clearly communicates the applicable standards for
2 solitary confinement, including the standards set
3 forth in this section; and
- 4 (C) Provides information on the identification of
5 developmental disabilities; symptoms of mental
6 illness, including trauma disorders; and methods
7 for responding safely to persons in distress;
- 8 (3) Requiring documentation of all decisions, procedures,
9 and reviews of committed persons placed in solitary
10 confinement;
- 11 (4) Requiring monitoring of compliance with all rules
12 governing cells, units, and other spaces used for
13 solitary confinement;
- 14 (5) Requiring the posting of quarterly reports on the
15 department's official website that:
- 16 (A) Describe the nature and extent of each
17 correctional facility's use of solitary
18 confinement and include data on the age, sex,
19 gender identity, ethnicity, incidence of mental
20 illness, and type of confinement status for
21 committed persons placed in solitary confinement;



- 1 (B) Include the committed person population as of the
- 2 last day of each quarter and a non-duplicative,
- 3 cumulative count of the number of committed
- 4 persons placed in solitary confinement during the
- 5 fiscal year;
- 6 (C) Include the incidence of emergency confinement,
- 7 self-harm, suicide, and assault in any solitary
- 8 confinement unit, as well as explanations for
- 9 each instance of facility-wide lockdown; and
- 10 (D) Exclude personally identifiable information
- 11 regarding any committed person; and
- 12 (6) Updating the department's corrections administration
- 13 policy and procedures manual, as necessary and
- 14 appropriate, to comply with the provisions of this
- 15 section, including the requirement to use appropriate
- 16 alternatives to solitary confinement for committed
- 17 persons who are members of a vulnerable population.
- 18 (f) Following the initial hearing for the placement of an
- 19 individual into solitary confinement, the department shall
- 20 immediately notify and transmit all relevant documentation and
- 21 evidence to the Hawaii correctional system oversight commission.



1 The Hawaii correctional system oversight commission shall
2 thoroughly review all determinations regarding the imposition of
3 solitary confinement for fairness, impartiality, alignment with
4 best practices, and other factors the Hawaii correctional system
5 oversight commission finds relevant, and shall issue quarterly
6 reports on the utilization thereof.

7 To ensure strict adherence to the solitary confinement
8 procedures delineated within this chapter, and to prevent the
9 department or its contracted entities from implementing cell
10 confinement exceeding twenty hours without proper adherence to
11 the procedures outlined in this chapter, the Hawaii correctional
12 system oversight commission shall actively monitor and review
13 all housing placements involving individuals subjected to twenty
14 or more hours of cell confinement, irrespective of whether the
15 placements are designated as solitary confinement by the
16 department or state-contracted facilities.

17 (g) As used in this section:

18 "Correctional facility" means a state prison, other penal
19 institution, or an institution or a facility designated by the
20 department as a place of confinement under this chapter.

21 "Correctional facility" includes community correctional centers,



1 high-security correctional facilities, temporary correctional
2 facilities, in-state correctional facilities, state-contracted
3 correctional facilities operated by private entities, and jails
4 maintained by county police departments.

5 "Member of a vulnerable population" means any committed
6 person who:

- 7 (1) Is twenty-one years of age or younger;
8 (2) Is sixty years of age or older;
9 (3) Has a physical or mental disability, a history of
10 psychiatric hospitalization, or recently exhibited
11 conduct, including serious self-mutilation, that
12 indicates the need for further observation or
13 evaluation to determine the presence of mental
14 illness;
15 (4) Has a developmental disability, as defined in section
16 333F-1;
17 (5) Has a serious medical condition that cannot be
18 effectively treated while the committed person is in
19 solitary confinement;
20 (6) Is pregnant, in the postpartum period, or recently
21 suffered a miscarriage or terminated a pregnancy;



1 (7) Has a significant auditory or visual impairment; or

2 (8) Is perceived to be lesbian, gay, bisexual,
3 transgender, or intersex.

4 "Solitary confinement" occurs when all of the following
5 conditions are present:

6 (1) A committed person is confined in a correctional
7 facility pursuant to disciplinary, administrative,
8 protective, investigative, medical, or other purposes;

9 (2) The confinement occurs in a cell or similarly
10 physically restrictive holding or living space,
11 whether alone or with one or more other committed
12 persons, for twenty hours or more per day; and

13 (3) The committed person's activities, movements, and
14 social interactions are severely restricted."

15 SECTION 3. No later than April 1, 2025, the department of
16 corrections and rehabilitation shall:

17 (1) Develop written policies and implement procedures, as
18 necessary and appropriate, for the review of committed
19 persons placed in solitary confinement;

20 (2) Initiate a review of each committed person placed in
21 solitary confinement during the immediately preceding



1 fiscal year to determine whether the placement would
2 be appropriate in light of the requirements of
3 section 353- , Hawaii Revised Statutes; and
4 (3) Develop a plan for providing step-down and
5 transitional units, programs, and staffing patterns to
6 accommodate committed persons currently placed in
7 solitary confinement, committed persons who may
8 prospectively be placed in solitary confinement, and
9 committed persons who receive an intermediate sanction
10 in lieu of being placed in solitary confinement;
11 provided that staffing patterns for correctional and
12 program staff are set at levels necessary to ensure
13 the safety of staff and committed persons pursuant to
14 the requirements of this Act.

15 SECTION 4. No later than forty days prior to the convening
16 of the regular session of 2026, the department of corrections
17 and rehabilitation shall submit to the legislature and Hawaii
18 correctional system oversight commission a status report of the
19 department's progress toward full compliance with this Act,
20 along with draft copies of written policies and procedures
21 undertaken pursuant to this Act.



1 SECTION 5. New statutory material is underscored.

2 SECTION 6. This Act shall take effect on July 1, 3000;

3 provided that section 2 shall take effect on July 1, 2025.



Report Title:

DCR; Hawaii Correctional System Oversight Commission;
Correctional Facilities; Inmates; Solitary Confinement;
Restrictions; 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 develop written policies and procedures regarding solitary confinement by 7/1/2025. Requires the Hawaii Correctional System Oversight Commission to review certain housing placements. Requires the Department to develop policies and procedures to review committed persons placed in solitary confinement and develop a plan for committed persons currently in solitary confinement by 4/1/2025. Requires a report to the Legislature and Hawaii Correctional System Oversight Commission. Effective 7/1/3000. (HD2)

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

