

JAN 19 2024

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) Restrict the use of solitary confinement in state-
15 operated and state-contracted correctional facilities,
16 including:

17 (A) Prohibiting indefinite solitary confinement;

18 (B) Prohibiting prolonged solitary confinement; and

19 (C) Prohibiting the placement of a committed person
20 in a dark or constantly lit cell,

21 with certain specified exceptions;



- 1 (2) Prohibit the use of solitary confinement and requires
- 2 the use of appropriate alternatives for committed
- 3 persons who are members of a vulnerable population;
- 4 (3) Require the department of corrections and
- 5 rehabilitation to develop written policies and
- 6 procedures regarding solitary confinement by
- 7 January 1, 2025;
- 8 (4) Require the department to develop policies and
- 9 procedures to review committed persons placed in
- 10 solitary confinement and develop a plan for committed
- 11 persons currently in solitary confinement by April 1,
- 12 2025; and
- 13 (5) Require a report to the legislature.

14 SECTION 2. Chapter 353, Hawaii Revised Statutes, is

15 amended by adding a new section to be appropriately designated

16 and to read as follows:

17 "§353- Solitary confinement; restrictions on use;

18 policies and procedures. (a) The use of solitary confinement

19 in correctional facilities shall be restricted as follows:

- 20 (1) Except as otherwise provided in subsection (d), a
- 21 committed person shall not be placed in solitary



1 confinement unless there is reasonable cause to
2 believe that the committed person would create a
3 substantial risk of immediate serious harm to the
4 committed person's self or another, as evidenced by
5 recent threats or conduct, and that a less restrictive
6 intervention would be insufficient to reduce this
7 risk; provided that the correctional facility shall
8 bear the burden of establishing the foregoing by clear
9 and convincing evidence;

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

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

18 (4) Except as otherwise provided in subsection (d), a
19 committed person shall only be held in solitary
20 confinement pursuant to initial procedures and reviews
21 that provide timely, fair, and meaningful



1 opportunities for the committed person to contest the
2 confinement. These procedures and reviews shall
3 include the right to:

4 (A) An initial hearing held within seventy-two hours
5 of placement in solitary confinement and a review
6 every fifteen days thereafter, in the absence of
7 exceptional circumstances, unavoidable delays, or
8 reasonable postponements;

9 (B) Appear at the hearing;

10 (C) Be represented at the hearing;

11 (D) An independent hearing officer; and

12 (E) Receive a written statement of reasons for the
13 decision made at the hearing;

14 (5) Except as otherwise provided in subsection (d), the
15 final decision to place a committed person in solitary
16 confinement shall be made by the warden or the
17 warden's designee;

18 (6) Except as otherwise provided in this subsection or in
19 subsection (d), a committed person shall not be placed
20 or held in solitary confinement if the warden or the



1 warden's designee determines that the committed person
2 no longer meets the criteria for the confinement;

3 (7) A clinician shall evaluate on a daily basis each
4 committed person who has been placed in solitary
5 confinement, in a confidential setting outside of the
6 committed person's cell whenever possible, to
7 determine whether the committed person is a member of
8 a vulnerable population. Except as otherwise provided
9 in subsection (d), a committed person determined to be
10 a member of a vulnerable population shall be
11 immediately removed from solitary confinement and
12 moved to an appropriate placement elsewhere;

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

17 (9) Except as otherwise provided in subsection (d), during
18 a facility-wide lockdown, a committed person shall not
19 be placed in solitary confinement for more than
20 fifteen consecutive days, or for more than twenty days
21 total during any sixty-day period;



1 (10) Cells or other holding or living space used for
2 solitary confinement shall be properly ventilated,
3 lit, temperature-controlled, clean, and equipped with
4 properly functioning sanitary fixtures;

5 (11) A correctional facility shall maximize the amount of
6 time spent outside of the cell by a committed person
7 held in solitary confinement by providing the
8 committed person with access to recreation, education,
9 clinically appropriate treatment therapies, skill-
10 building activities, and social interaction with staff
11 and other committed persons, as appropriate;

12 (12) A committed person held in solitary confinement shall
13 not be denied access to:

14 (A) Food, water, or any other necessity; and

15 (B) Appropriate medical care, including emergency
16 medical care;

17 (13) Each committed person held in solitary confinement
18 shall be given a written copy of the committed
19 person's sanction and the criteria for a pathway back
20 into the general population. The department shall
21 ensure that the committed person understands the



1 reason for the sanction and the criteria for the
2 pathway back into the general population. The
3 committed person's case manager shall work with the
4 committed person in solitary confinement to develop a
5 plan of action to reduce the committed person's
6 violations, return to general population, and to work
7 on the committed person's rehabilitation; and

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

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

17 (1) A committed person who is a member of a vulnerable
18 population because the committed person is twenty-one
19 years of age or younger, has a disability based on
20 mental illness, or has a developmental disability:



S.B. NO. 2452

- 1 (A) Shall not be subject to discipline for refusing
2 treatment or medication, or for engaging in
3 self-harm or related conduct or threatening to do
4 so; and
- 5 (B) Shall be screened by a correctional facility
6 clinician or the appropriate screening service
7 pursuant to rules and, if found to meet the
8 criteria for civil commitment, shall be placed in
9 a specialized unit designated by the director or
10 deputy director of the department, or civilly
11 committed to the least restrictive appropriate
12 short-term care or psychiatric facility
13 designated by the department of health, but only
14 if the committed person would otherwise have been
15 placed in solitary confinement; and
- 16 (2) A committed person who is a member of a vulnerable
17 population because the committed person is sixty years
18 of age or older; has a serious medical condition that
19 cannot be effectively treated while the committed
20 person is in solitary confinement; or is pregnant, in
21 the postpartum period, or recently suffered a



1 miscarriage or terminated a pregnancy, shall
2 alternately be placed in an appropriate medical or
3 other unit designated by the director or deputy
4 director of the department, but only if the committed
5 person would otherwise have been placed in solitary
6 confinement.

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

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

17 (1) The warden or the warden's designee determines that a
18 facility-wide lockdown is necessary to ensure the
19 safety of committed persons in the facility, until the
20 warden or the warden's designee determines that the
21 threat to committed person safety no longer exists.



1 The warden or the warden's designee shall document the
2 specific reasons that any facility-wide lockdown was
3 necessary for more than twenty-four hours, and the
4 specific reasons that less restrictive interventions
5 were insufficient to accomplish the facility's safety
6 goals. Within six hours of a decision to extend a
7 facility-wide lockdown beyond twenty-four hours, the
8 director or deputy director of the department shall
9 publish the foregoing reasons on the department's
10 website and shall provide meaningful notice to the
11 legislature of the reasons for the lockdown;

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

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

17 (B) A committed person placed in emergency
18 confinement shall receive an initial medical and
19 mental health evaluation within six hours and a
20 personal and comprehensive medical and mental
21 health examination conducted by a clinician



1 within twenty-four hours. Reports of these
2 evaluations shall be immediately provided to the
3 warden or the warden's designee;

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

18 (4) The warden or the warden's designee determines that a
19 committed person should be placed in protective
20 custody; provided that:



- 1 (A) A committed person may be placed in voluntary
2 protective custody only when the committed person
3 has provided voluntary, informed, and written
4 consent and there is reasonable cause to believe
5 that confinement is necessary to prevent
6 reasonably foreseeable harm. When a committed
7 person makes a voluntary, informed, and written
8 request to be placed in protective custody and
9 the request is denied, the correctional facility
10 shall bear the burden of establishing a basis for
11 denying the request;
- 12 (B) A committed person may be placed in involuntary
13 protective custody only when the correctional
14 facility is able to establish by clear and
15 convincing evidence that confinement is necessary
16 to prevent reasonably foreseeable harm and that a
17 less restrictive intervention would be
18 insufficient to prevent the harm;
- 19 (C) A committed person placed in protective custody
20 shall be provided opportunities for activities,
21 movement, and social interaction, in a manner



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

6 (D) A committed person subject to removal from
7 protective custody shall be provided with a
8 timely, fair, and meaningful opportunity to
9 contest the removal;

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

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



1 transferring the committed person would be
2 insufficient to ensure the committed person's
3 safety; and

4 (5) The warden or the warden's designee determines that a
5 committed person should be placed in solitary
6 confinement pending investigation of an alleged
7 disciplinary offense; provided that:

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



1 encouraging other persons to engage in
2 misconduct;
3 (B) The committed person's placement in solitary,
4 disciplinary, or administrative segregation shall
5 not revert to the other form of segregation after
6 the initial sanction has been served;
7 (C) A committed person's placement in solitary
8 confinement pending investigation of an alleged
9 disciplinary offense shall be reviewed within
10 twenty-four hours by a supervisory-level employee
11 who was not involved in the initial placement
12 decision; and
13 (D) A committed person who has been placed in
14 solitary confinement pending investigation of an
15 alleged disciplinary offense shall be considered
16 for release to the facility's general population
17 if the committed person demonstrates good
18 behavior while in solitary confinement. If the
19 committed person is found guilty of the
20 disciplinary offense, the committed person's good



1 behavior shall be considered when determining the
2 appropriate penalty for the offense.

3 (e) No later than July 1, 2025, the department shall have
4 developed written policies and implemented procedures, as
5 necessary and appropriate, to effectuate this section,
6 including:

7 (1) Establishing less restrictive interventions as
8 alternatives to solitary confinement, including
9 separation from other committed persons, transfer to
10 other correctional facilities, and any other sanction
11 not involving solitary confinement that is authorized
12 by the department's policies and procedures; provided
13 that any temporary restrictions on an committed
14 person's privileges or access to resources, including
15 religious services, mail and telephone privileges,
16 visitation by contacts, and outdoor or recreation
17 access, shall be imposed only when necessary to ensure
18 the safety of the committed person or other persons,
19 and shall not restrict the committed person's access
20 to food, basic necessities, or legal assistance;



- 1 (2) Requiring periodic training of disciplinary staff and
2 all other staff who interact with committed persons
3 held in solitary confinement; provided that the
4 training:
- 5 (A) Is developed and conducted with assistance from
6 appropriately trained and qualified
7 professionals;
- 8 (B) Clearly communicates the applicable standards for
9 solitary confinement, including the standards set
10 forth in this section; and
- 11 (C) Provides information on the identification of
12 developmental disabilities; symptoms of mental
13 illness, including trauma disorders; and methods
14 for responding safely to persons in distress;
- 15 (3) Requiring documentation of all decisions, procedures,
16 and reviews of committed persons placed in solitary
17 confinement;
- 18 (4) Requiring monitoring of compliance with all rules
19 governing cells, units, and other spaces used for
20 solitary confinement;



S.B. NO. 2452

- 1 (5) Requiring the posting of quarterly reports on the
2 department's official website that:
- 3 (A) Describe the nature and extent of each
4 correctional facility's use of solitary
5 confinement and include data on the age, sex,
6 gender identity, ethnicity, incidence of mental
7 illness, and type of confinement status for
8 committed persons placed in solitary confinement;
- 9 (B) Include the committed person population as of the
10 last day of each quarter and a non-duplicative,
11 cumulative count of the number of committed
12 persons placed in solitary confinement during the
13 fiscal year;
- 14 (C) Include the incidence of emergency confinement,
15 self-harm, suicide, and assault in any solitary
16 confinement unit, as well as explanations for
17 each instance of facility-wide lockdown; and
- 18 (D) Exclude personally identifiable information
19 regarding any committed person; and
- 20 (6) Updating the department's corrections administration
21 policy and procedures manual, as necessary and



S.B. NO. 2452

1 appropriate, to comply with the provisions of this
2 section, including the requirement to use appropriate
3 alternatives to solitary confinement for committed
4 persons who are members of a vulnerable population.

5 (f) As used in this section:

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

9 "Correctional facility" includes community correctional centers,
10 high-security correctional facilities, temporary correctional
11 facilities, in-state correctional facilities, state-contracted
12 correctional facilities operated by private entities, and jails
13 maintained by county police departments.

14 "Member of a vulnerable population" means any committed
15 person who:

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

17 (2) Is sixty years of age or older;

18 (3) Has a physical or mental disability, a history of
19 psychiatric hospitalization, or recently exhibited
20 conduct, including serious self-mutilation, that
21 indicates the need for further observation or



- 1 evaluation to determine the presence of mental
- 2 illness;
- 3 (4) Has a developmental disability, as defined in section
- 4 333F-1;
- 5 (5) Has a serious medical condition that cannot be
- 6 effectively treated while the committed person is in
- 7 solitary confinement;
- 8 (6) Is pregnant, in the postpartum period, or recently
- 9 suffered a miscarriage or terminated a pregnancy;
- 10 (7) Has a significant auditory or visual impairment; or
- 11 (8) Is perceived to be lesbian, gay, bisexual,
- 12 transgender, or intersex.

13 "Solitary confinement" occurs when all of the following
14 conditions are present:

- 15 (1) A committed person is confined in a correctional
- 16 facility pursuant to disciplinary, administrative,
- 17 protective, investigative, medical, or other purposes;
- 18 (2) The confinement occurs in a cell or similarly
- 19 physically restrictive holding or living space,
- 20 whether alone or with one or more other committed
- 21 persons, for twenty hours or more per day; and



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

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

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

8 (2) Initiate a review of each committed person placed in
9 solitary confinement during the immediately preceding
10 fiscal year to determine whether the placement would
11 be appropriate in light of the requirements of
12 section 353- , Hawaii Revised Statutes; and

13 (3) Develop a plan for providing step-down and
14 transitional units, programs, and staffing patterns to
15 accommodate committed persons currently placed in
16 solitary confinement, committed persons who may
17 prospectively be placed in solitary confinement, and
18 committed persons who receive an intermediate sanction
19 in lieu of being placed in solitary confinement;
20 provided that staffing patterns for correctional and
21 program staff are set at levels necessary to ensure



S.B. NO. 2452

1 the safety of staff and committed persons pursuant to
2 the requirements of this Act.

3 SECTION 4. No later than forty days prior to the convening
4 of the regular session of 2026, the department of corrections
5 and rehabilitation shall submit to the legislature and Hawaii
6 correctional system oversight commission a status report of the
7 department's progress toward full compliance with this Act,
8 along with draft copies of written policies and procedures
9 undertaken pursuant to this Act.

10 SECTION 5. New statutory material is underscored.

11 SECTION 6. This Act shall take effect upon its approval;
12 provided that section 2 shall take effect on July 1, 2025.

13

INTRODUCED BY: *Hal Rhoads*



S.B. NO. 2452

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. Prohibits the use of solitary confinement and requires the use of appropriate alternatives for committed persons who are members of a vulnerable population. Requires the Department of Corrections and Rehabilitation to develop written policies and procedures regarding solitary confinement by 7/1/2025. 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. Effective 7/1/2025.

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

