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# 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 restrictive housing on  
3 individuals. Spending time in restrictive housing has been  
4 found to increase the risk of premature death, even after  
5 release from incarceration. Restrictive housing 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 restrictive housing 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",  
12 restrictive housing serves as a response to misconduct charges  
13 such as fighting or drug use. When used for correctional  
14 facility management, often called "administrative custody" or  
15 "administrative segregation", restrictive housing 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 restrictive housing 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 restrictive housing, 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, included an observation by the  
16 Vera Institute of Justice that the prevalence of incarcerated  
17 individuals having mental illness is at odds with the design,  
18 operation, and resources of most correctional facilities.  
19 Studies show that the detrimental effects of restrictive housing  
20 far exceed the immediate psychological consequences identified  
21 by previous research, such as anxiety, depression, and



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

6       The legislature recognizes that as of 2021, legislation to  
7 ban or limit the use of restrictive housing in prison has been  
8 introduced in thirty-two states and the United States Congress.  
9 Further, twenty-four states have enacted statutes that limit or  
10 prohibit restrictive housing while other states have limited its  
11 use through administrative code, policy, or court rules. Some  
12 of these new laws, such as those enacted by Connecticut and  
13 Washington, reflect tentative and piecemeal approaches to  
14 change. However, most of the new laws represent significant  
15 reforms to existing practices and thus have the potential to  
16 facilitate more humane and effective practices in prisons and  
17 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 restrictive housing as a measure of last resort, to be used  
5 only in exceptional circumstances. Moreover, the rules prohibit  
6 the use of restrictive housing 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 restrictive housing 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) Restrict the use of restrictive housing in state-  
16 operated and state-contracted correctional facilities,  
17 with certain specified exceptions;
- 18 (2) Require the department of corrections and  
19 rehabilitation to develop written policies and  
20 procedures regarding restrictive housing by July 1,  
21 2026;



- 1 (3) Require the Hawaii correctional system oversight
- 2 commission to review certain housing placements;
- 3 (4) Require the department of corrections and
- 4 rehabilitation, by April 1, 2026, to develop policies
- 5 and procedures to review committed persons placed in
- 6 restrictive housing and develop a plan for committed
- 7 persons currently in restrictive housing; and
- 8 (5) Require a report to the legislature and Hawaii
- 9 correctional system oversight commission.

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

13 "§353- Restrictive housing; restrictions on use;  
 14 policies and procedures. (a) The use of restrictive housing in  
 15 correctional facilities shall be restricted as follows:

16 (1) Except as otherwise provided in subsection (d), a  
 17 committed person shall not be placed in restrictive  
 18 housing unless there is reasonable cause to believe  
 19 that the committed person would create a substantial  
 20 risk of immediate serious harm to the committed  
 21 person's self or another, as evidenced by recent



1           threats or conduct, and that a less restrictive  
2           intervention would be insufficient to reduce this  
3           risk; provided that the correctional facility shall  
4           bear the burden of establishing the foregoing by clear  
5           and convincing evidence;  
6           (2) Except as otherwise provided in subsection (d), a  
7           committed person shall not be placed in restrictive  
8           housing for non-disciplinary reasons;  
9           (3) Except as otherwise provided in subsection (d), a  
10           committed person shall not be placed in restrictive  
11           housing before receiving a personal and comprehensive  
12           medical and mental health examination conducted by a  
13           clinician;  
14           (4) Except as otherwise provided in subsection (d), a  
15           committed person shall only be held in restrictive  
16           housing pursuant to initial procedures and reviews  
17           that provide timely, fair, and meaningful  
18           opportunities for the committed person to contest the  
19           confinement. These procedures and reviews shall  
20           include the right to:



- 1           (A) An initial hearing held within twenty-four hours
- 2                   of placement in restrictive housing, 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 hearings 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
- 12           restrictive housing 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 restrictive housing 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 restrictive
- 21           housing, 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 restrictive housing and moved  
7           to an appropriate placement elsewhere;  
8        (8) A disciplinary sanction of restrictive housing imposed  
9           on a committed person who is subsequently removed from  
10           restrictive housing pursuant to this subsection shall  
11           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 restrictive housing 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           restrictive housing shall be properly ventilated, lit,  
19           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 restrictive housing by providing the committed  
4        person with access to recreation, education,  
5        clinically appropriate treatment therapies,  
6        skill-building activities, and social interaction with  
7        staff and other committed persons, as appropriate;
- 8        (12) A committed person held in restrictive housing shall  
9        not be denied access to:
- 10       (A) Food, water, or any other necessity;  
11       (B) Appropriate medical care, including emergency  
12       medical care; and  
13       (C) Access to legal counsel;
- 14       (13) Each committed person held in restrictive housing  
15       shall receive a written copy of the committed person's  
16       sanction and the criteria for a pathway back into the  
17       general population. The department shall ensure that  
18       the committed person understands the reason for the  
19       sanction and the criteria for the pathway back into  
20       the general population. The committed person's case  
21       manager shall work with the committed person in



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

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

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

16 (1) Twenty-one years of age or younger, has a disability  
17 based on mental illness, or has a developmental  
18 disability shall:

19 (A) Not be subject to discipline for refusing  
20 treatment or medication, or for engaging in



1           self-harm or related conduct or threatening to do  
2           so; and  
3           (B) Be screened by a correctional facility clinician  
4           or the appropriate screening service pursuant to  
5           rules and, if found to meet the criteria for  
6           civil commitment, shall be placed in a  
7           specialized unit designated by the director or  
8           deputy director of the department, or civilly  
9           committed to the least restrictive appropriate  
10           short-term care or psychiatric facility  
11           designated by the department of health, but only  
12           if the committed person would otherwise have been  
13           placed in restrictive housing; or  
14           (2) Sixty years of age or older; has a serious medical  
15           condition that cannot be effectively treated while the  
16           committed person is in restrictive housing; or is  
17           pregnant, in the postpartum period, or recently  
18           suffered a miscarriage or terminated a pregnancy,  
19           shall alternately be placed in an appropriate medical  
20           or other unit designated by the director or deputy  
21           director of the department, but only if the committed



1 person would otherwise have been placed in restrictive  
2 housing.

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

10 (d) The use of restrictive housing in correctional  
11 facilities shall be permitted only under the following limited  
12 circumstances:

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



1 interventions were insufficient to accomplish the  
2 facility's safety goals. Within six hours of a  
3 decision to extend a facility-wide lockdown beyond  
4 twenty-four hours, the director or deputy director of  
5 the department shall publish the foregoing reasons on  
6 the department's website and shall provide meaningful  
7 notice to the legislature of the reasons for the  
8 lockdown;

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

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

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



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



1           consent and there is reasonable cause to believe  
 2           that protective custody is necessary to prevent  
 3           reasonably foreseeable harm. When a committed  
 4           person makes a voluntary, informed, and written  
 5           request to be placed in protective custody and  
 6           the request is denied, the correctional facility  
 7           shall bear the burden of establishing a basis for  
 8           denying the request;

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

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



1           committed persons in the facility's general  
2           population;

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

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

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



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



1 not revert to another form of segregation after  
2 the initial sanction has been served;

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

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

19 (e) No later than July 1, 2026, the department shall  
20 develop written policies and implement procedures, as necessary  
21 and appropriate, to effectuate this section, including:



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



- 1           (B) Clearly communicates the applicable standards for  
2           restrictive housing, 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 restrictive  
10           housing;
- 11           (4) Requiring monitoring of compliance with all rules  
12           governing cells, units, and other spaces used for  
13           restrictive housing;
- 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 restrictive  
18           housing and include data on the age, sex, gender  
19           identity, ethnicity, incidence of mental illness,  
20           and type of confinement status for committed  
21           persons placed in restrictive housing;



- 1           (B) Include the population of committed persons as of
- 2           the last day of each quarter and a
- 3           non-duplicative, cumulative count of the number
- 4           of committed persons placed in restrictive
- 5           housing during the fiscal year;
- 6           (C) Include the incidence of emergency confinement,
- 7           self-harm, suicide, and assault in any
- 8           restrictive housing unit, as well as explanations
- 9           for 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 this section, including
- 15          the requirement to use appropriate alternatives to
- 16          restrictive housing for committed persons who are
- 17          members of a vulnerable population.
- 18          (f) Following the initial hearing for the placement of an
- 19          individual into restrictive housing, 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 restrictive housing 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 The Hawaii correctional system oversight commission shall  
8 actively monitor and review all housing placements involving  
9 individuals subjected to twenty or more hours of cell  
10 confinement, irrespective of whether the placements are  
11 designated as restrictive housing by the department or  
12 state-contracted facilities, to ensure that the department and  
13 its contracted entities do not implement cell confinement  
14 exceeding twenty hours without proper adherence to the  
15 procedures set forth in this section.

16 (g) As used in this section:

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

20 "Correctional facility" includes community correctional centers,  
21 high-security correctional facilities, temporary correctional



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

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

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

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

8 (3) Has a physical or mental disability, a history of  
9 psychiatric hospitalization, or recently exhibited  
10 conduct, including serious self-mutilation, that  
11 indicates the need for further observation or  
12 evaluation to determine the presence of mental  
13 illness;

14 (4) Has a developmental disability, as defined in section  
15 333F-1;

16 (5) Has a serious medical condition that cannot be  
17 effectively treated while the committed person is in  
18 restrictive housing;

19 (6) Is pregnant, is in the postpartum period, or recently  
20 suffered a miscarriage or terminated a pregnancy;

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



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

3       "Restrictive housing" is defined as occurring when all of  
4 the following conditions are present:

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

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

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

14       SECTION 3. No later than April 1, 2026, the department of  
15 corrections and rehabilitation shall:

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

19       (2) Initiate a review of each committed person placed in  
20           restrictive housing during the immediately preceding  
21           fiscal year to determine whether the placement would



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

14       SECTION 4. No later than forty days prior to the convening  
15 of the regular session of 2027, the department of corrections  
16 and rehabilitation shall submit to the legislature and Hawaii  
17 correctional system oversight commission a status report of the  
18 department's progress toward full compliance with this Act,  
19 along with draft copies of written policies and procedures  
20 undertaken pursuant to this Act.

21       SECTION 5. New statutory material is underscored.



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



**Report Title:**

DCR; Hawaii Correctional System Oversight Commission;  
Correctional Facilities; Committed Persons; Restrictive Housing;  
Restrictions; Report

**Description:**

Restricts the use of restrictive housing 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 restrictive housing by 7/1/2026. Requires the Hawaii Correctional System Oversight Commission to review certain housing placements. Requires the Department by 4/1/2026 to develop policies and procedures to review committed persons placed in restrictive housing and develop a plan for committed persons currently in restrictive housing. Requires a report to the Legislature and Hawaii Correctional System Oversight Commission. Effective 7/1/3000. (HD1)

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

