

---

# 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) Except as otherwise provided in  
15   subsection (d), the use of restrictive housing in correctional  
16   facilities shall be restricted as follows:

- 17           (1) A 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) A committed person shall not be placed in restrictive  
7 housing for non-disciplinary reasons;

8 (3) A committed person shall not be placed in restrictive  
9 housing before receiving a personal and comprehensive  
10 medical and mental health examination conducted by a  
11 clinician;

12 (4) A committed person shall only be held in restrictive  
13 housing pursuant to initial procedures and reviews  
14 that provide timely, fair, and meaningful  
15 opportunities for the committed person to contest the  
16 confinement. These procedures and reviews shall  
17 include the right to:

18 (A) An initial hearing held within twenty-four hours  
19 of placement in restrictive housing, in the  
20 absence of exceptional circumstances, unavoidable  
21 delays, or reasonable postponements;



- 1           (B) Appear at the hearing;
- 2           (C) Be represented at the hearing;
- 3           (D) An independent hearings officer; and
- 4           (E) Receive a written statement of reasons for the  
5               decision made at the hearing;
- 6       (5) The final decision to place a committed person in  
7               restrictive housing shall be made by the warden or the  
8               warden's designee;
- 9       (6) A committed person shall not be placed or held in  
10               restrictive housing if the warden or the warden's  
11               designee determines that the committed person no  
12               longer meets the criteria for the confinement;
- 13       (7) A clinician shall evaluate on a daily basis each  
14               committed person who has been placed in restrictive  
15               housing, in a confidential setting outside of the  
16               committed person's cell whenever possible, to  
17               determine whether the committed person is a member of  
18               a vulnerable population. A committed person  
19               determined to be a member of a vulnerable population  
20               shall be immediately removed from restrictive housing  
21               and moved to an appropriate placement elsewhere;



1       (8) A disciplinary sanction of restrictive housing imposed  
2       on a committed person who is subsequently removed from  
3       restrictive housing pursuant to this subsection shall  
4       be deemed completed;

5       (9) During a facility-wide lockdown, a committed person  
6       shall not be placed in restrictive housing for more  
7       than fifteen consecutive days, or for more than twenty  
8       days total during any sixty-day period;

9       (10) Cells or other holding or living space used for  
10       restrictive housing shall be properly ventilated, lit,  
11       temperature-controlled, clean, and equipped with  
12       properly functioning sanitary fixtures;

13       (11) A correctional facility shall maximize the amount of  
14       time spent outside of the cell by a committed person  
15       held in restrictive housing by providing the committed  
16       person with access to recreation, education,  
17       clinically appropriate treatment therapies,  
18       skill-building activities, and social interaction with  
19       staff and other committed persons, as appropriate;

20       (12) A committed person held in restrictive housing shall  
21       not be denied access to:





1           (A) Food, water, or any other necessity;

2           (B) Appropriate medical care, including emergency  
3           medical care; and

4           (C) Legal counsel;

5       (13) Each committed person held in restrictive housing  
6       shall receive a written copy of the committed person's  
7       sanction and the criteria for a pathway back into the  
8       general population. The department shall ensure that  
9       the committed person understands the reason for the  
10       sanction and the criteria for the pathway back into  
11       the general population. The committed person's case  
12       manager shall work with the committed person in  
13       restrictive housing to develop a plan of action to  
14       reduce the committed person's violations, return the  
15       committed person to the general population, and work  
16       on the committed person's rehabilitation; and

17       (14) A committed person shall not be released directly from  
18       restrictive housing to the community during the final  
19       one hundred eighty days of the committed person's term  
20       of incarceration, unless necessary for the safety of  
21       the committed person, staff, other committed persons,



1           or the public. This paragraph shall not be  
2           interpreted to delay a committed person's scheduled  
3           release.

4           (b) Except as otherwise provided in subsection (d), a  
5           committed person who is a member of a vulnerable population  
6           shall not be placed in restrictive housing; provided that a  
7           committed person who is a member of a vulnerable population  
8           because the committed person is:

9           (1) Twenty-one years of age or younger, has a disability  
10           based on mental illness, or has a developmental  
11           disability shall:

12           (A) Not be subject to discipline for refusing  
13           treatment or medication, or for engaging in  
14           self-harm or related conduct or threatening to do  
15           so; and

16           (B) Be screened by a correctional facility clinician  
17           or the appropriate screening service pursuant to  
18           rules and, if found to meet the criteria for  
19           civil commitment, shall be placed in a  
20           specialized unit designated by the director or  
21           deputy director of the department, or civilly



1 committed to the least restrictive appropriate  
2 short-term care or psychiatric facility  
3 designated by the department of health, but only  
4 if the committed person would otherwise have been  
5 placed in restrictive housing; or

6 (2) Sixty years of age or older; has a serious medical  
7 condition that cannot be effectively treated while the  
8 committed person is in restrictive housing; or is  
9 pregnant, in the postpartum period, or recently  
10 suffered a miscarriage or terminated a pregnancy,  
11 shall alternatively be placed in an appropriate  
12 medical or other unit designated by the director or  
13 deputy director of the department, but only if the  
14 committed person would otherwise have been placed in  
15 restrictive housing.

16 (c) A committed person shall not be placed in restrictive  
17 housing or in any other cell or other holding or living space,  
18 in any facility, whether alone or with one or more other  
19 committed persons, if there is reasonable cause to believe that  
20 there exists a risk of harm, harassment, intimidation,



1 extortion, or other physical or emotional abuse to the committed  
2 person or to another committed person in that placement.

3 (d) The use of restrictive housing in correctional  
4 facilities shall be permitted only under the following limited  
5 circumstances:

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



1           notice to the legislature of the reasons for the  
2           lockdown;

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

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

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

16       (3) A physician, based upon the physician's personal  
17       examination of a committed person, determines that the  
18       committed person should be placed or held in medical  
19       isolation; provided that any decision to place or hold  
20       a committed person in medical isolation due to a  
21       mental health emergency shall be made by a clinician



1       and based upon the clinician's personal examination of  
2       the committed person. In any case of medical  
3       isolation occurring under this paragraph, a clinical  
4       review shall be conducted at least every six hours and  
5       as clinically indicated. A committed person in  
6       medical isolation due to a mental health emergency  
7       pursuant to this paragraph shall be placed in a mental  
8       health unit designated by the director or deputy  
9       director of the department;

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

13       (A) A committed person may be placed in voluntary  
14       protective custody only when the committed person  
15       has provided voluntary, informed, and written  
16       consent and there is reasonable cause to believe  
17       that protective custody is necessary to prevent  
18       reasonably foreseeable harm. When a committed  
19       person makes a voluntary, informed, and written  
20       request to be placed in protective custody and  
21       the request is denied, the correctional facility



1           shall bear the burden of establishing a basis for  
2           denying the request;

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

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

18          (D) A committed person subject to removal from  
19          protective custody shall be provided with a  
20          timely, fair, and meaningful opportunity to  
21          contest the removal;



1        (E) A committed person who is currently or may be  
2        placed in voluntary protective custody may opt  
3        out of that status by providing voluntary,  
4        informed, and written refusal of that status; and

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

16       (5) The warden or the warden's designee determines that a  
17       committed person should be placed in restrictive  
18       housing pending investigation of an alleged  
19       disciplinary offense; provided that:

20       (A) The committed person's placement in restrictive  
21       housing is pursuant to approval granted by the





1           warden or the warden's designee in an emergency  
2           situation, or is because the committed person's  
3           presence in the facility's general population  
4           while the investigation is ongoing poses a danger  
5           to the committed person, staff, other committed  
6           persons, or the public; provided further that the  
7           determination of danger shall be based upon a  
8           consideration of the seriousness of the committed  
9           person's alleged offense, including whether the  
10          offense involved violence or escape, or posed a  
11          threat to institutional safety by encouraging  
12          other persons to engage in misconduct;

13          (B) The committed person's placement in restrictive  
14          housing shall not revert to another form of  
15          segregation after the initial sanction has been  
16          served;

17          (C) A committed person's placement in restrictive  
18          housing pending investigation of an alleged  
19          disciplinary offense shall be reviewed within  
20          twenty-four hours by a supervisory-level employee



1           who was not involved in the initial placement  
2           decision; and

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

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

16          (1) Establishing less restrictive interventions as  
17          alternatives to restrictive housing, including  
18          separation from other committed persons, transfer to  
19          other correctional facilities, and any other sanction  
20          not involving restrictive housing that is authorized  
21          by the department's policies and procedures; provided



1 that any temporary restrictions on a committed  
2 person's privileges or access to resources, including  
3 religious services, mail and telephone privileges,  
4 visitation by contacts, and outdoor or recreation  
5 access, shall be imposed only when necessary to ensure  
6 the safety of the committed person or other persons,  
7 and shall not restrict the committed person's access  
8 to food, water, basic necessities, or legal  
9 assistance;

10 (2) Requiring periodic training of disciplinary staff and  
11 all other staff who interact with committed persons  
12 held in restrictive housing; provided that the  
13 training:

14 (A) Is developed and conducted with assistance from  
15 appropriately trained and qualified  
16 professionals;

17 (B) Clearly communicates the applicable standards for  
18 restrictive housing, including the standards set  
19 forth in this section; and

20 (C) Provides information on the identification of  
21 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 committed persons placed in restrictive  
5 housing;

6 (4) Requiring monitoring of compliance with all rules  
7 governing cells, units, and other spaces used for  
8 restrictive housing;

9 (5) Requiring the posting of quarterly reports on the  
10 department's official website that:

11 (A) Describe the nature and extent of each  
12 correctional facility's use of restrictive  
13 housing and include data on the age, sex, gender  
14 identity, ethnicity, incidence of mental illness,  
15 and type of confinement status for committed  
16 persons placed in restrictive housing;

17 (B) Include the population of committed persons as of  
18 the last day of each quarter and a  
19 non-duplicative, cumulative count of the number  
20 of committed persons placed in restrictive  
21 housing during the fiscal year;



1           (C) Include the incidence of emergency confinement,  
2           self-harm, suicide, and assault in any  
3           restrictive housing unit, as well as explanations  
4           for each instance of facility-wide lockdown; and

5           (D) Exclude personally identifiable information  
6           regarding any committed person; and

7           (6) Updating the department's corrections administration  
8           policy and procedures manual, as necessary and  
9           appropriate, to comply with this section, including  
10          the requirement to use appropriate alternatives to  
11          restrictive housing for committed persons who are  
12          members of a vulnerable population.

13          (f) Following the initial hearing for the placement of an  
14          individual into restrictive housing, the department shall  
15          immediately notify and transmit all relevant documentation and  
16          evidence to the Hawaii correctional system oversight commission.  
17          The Hawaii correctional system oversight commission shall  
18          thoroughly review all determinations regarding the imposition of  
19          restrictive housing for fairness, impartiality, alignment with  
20          best practices, and other factors the Hawaii correctional system



1 oversight commission finds relevant, and shall issue quarterly  
2 reports on the utilization thereof.

3 The Hawaii correctional system oversight commission shall  
4 actively monitor and review all housing placements involving  
5 individuals subjected to twenty or more hours of cell  
6 confinement, irrespective of whether the placements are  
7 designated as restrictive housing by the department or  
8 state-contracted facilities, to ensure that the department and  
9 its contracted entities do not implement cell confinement  
10 exceeding twenty or more hours without proper adherence to the  
11 procedures set forth in this section.

12 (g) As used in this section:

13 "Correctional facility" means a state prison, other penal  
14 institution, or an institution or a facility designated by the  
15 department as a place of confinement under this chapter.  
16 "Correctional facility" includes community correctional centers,  
17 high-security correctional facilities, temporary correctional  
18 facilities, in-state correctional facilities, state-contracted  
19 correctional facilities operated by private entities, and jails  
20 maintained by county police departments.



1       "Member of a vulnerable population" means any committed  
2 person who:

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

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

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

11       (4) Has a developmental disability, as defined in section  
12 333F-1;

13       (5) Has a serious medical condition that cannot be  
14 effectively treated while the committed person is in  
15 restrictive housing;

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

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

19       (8) Is perceived to be lesbian, gay, bisexual,  
20 transgender, or intersex.



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

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

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

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

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

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

17       (2) Initiate a review of each committed person placed in  
18       restrictive housing during the immediately preceding  
19       fiscal year to determine whether the placement would  
20       be appropriate in light of the requirements of  
21       section 353- , Hawaii Revised Statutes; and





(3) Develop a plan for providing step-down and transitional units, programs, and staffing patterns to accommodate committed persons currently placed in restrictive housing, committed persons who may prospectively be placed in restrictive housing, and committed persons who receive an intermediate sanction in lieu of being placed in restrictive housing; provided that staffing patterns for correctional and program staff shall be set at levels necessary to ensure the safety of staff and committed persons pursuant to the requirements of this Act.

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

SECTION 5. New statutory material is underscored.

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. (HD2)

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

