THE SENATE
THIRTY-THIRD LEGISLATURE, 2026
STATE OF HAWAII

S.B. NO. 2381

JAN 2 1 2026

A BILL FOR AN ACT

RELATING TO CORRECTIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature finds that experts have long documented the detrimental effects of restrictive housing on individuals. Spending time in restrictive housing has been found to increase the risk of premature death, even after release from incarceration. Restrictive housing is a severe form of punishment that is closely associated with long-lasting psychological harm and poor post-release outcomes. The official purposes of restrictive housing are typically divided into punishment and correctional facility management. When used as punishment by facility authorities, sometimes called "disciplinary custody" or "disciplinary segregation", restrictive housing serves as a response to misconduct charges such as fighting or drug use. When used for correctional facility management, often called "administrative custody" or "administrative segregation", restrictive housing serves to separate inmates deemed to pose a threat to staff, self, or other inmates, or as protective custody for inmates who seem or

are determined to be unsafe in the general prison population. Although the purposes of restrictive housing vary, correctional facility conditions and restrictions are often similar whether an incarcerated person is in disciplinary or administrative custody.

The legislature also finds that an overwhelming body of evidence shows that restrictive housing, which deprives inmates of meaningful human contact, including phone privileges that allow them to speak with loved ones, creates permanent psychological, neurological, and physical damage. Studies show that the detrimental effects of restrictive housing far exceed the immediate psychological consequences identified by previous research, such as anxiety, depression, and hallucinations. Unfortunately, these detrimental effects do not disappear once an inmate is released from restrictive housing. Even after release back into a community setting, a former inmate faces an elevated risk of suicide, drug overdose, heart attack, and stroke.

The legislature recognizes that as of 2021, legislation to ban or limit the use of restrictive housing in prison has been introduced in thirty-two states and the United States Congress.

Further, twenty-four states have enacted statutes that limit or prohibit restrictive housing while other states have limited its use through administrative code, policy, or court rules. Many of these new laws, codes, policies, or court rules represent significant reforms to existing practices and thus have the potential to facilitate more humane and effective practices in prisons and jails.

The legislature further finds that in response to the foregoing, Act 292, Session Laws of Hawaii 2025, (Act 292) was enacted to:

(1) Beginning July 1, 2026, restrict the use of restrictive housing in state-operated and state-contracted correctional facilities, with certain specified exceptions, which is codified as section 353-41, Hawaii Revised Statutes;

(2) Establish a restrictive housing legislative working group by August 1, 2025, to develop and recommend to the legislature more comprehensive laws, policies, and procedures regarding restrictive housing for members of vulnerable populations by January 8, 2027;

(3) Require the Hawaii correctional system oversight commission to review restrictive housing placements on an annual basis;

(4) Authorize the department of corrections and rehabilitation, by December 1, 2027, to implement, if practicable, policies and procedures recommended by the restrictive housing working group related to committed persons who are members of certain vulnerable populations and placed in restrictive housing and develop transition and service plans for these committed persons in restrictive housing; and

(5) Require interim and final reports to the legislature and Hawaii correctional system oversight commission.

The legislature further finds that the deadlines and restrictions contained in Act 292 have proven difficult to comply with, and therefore amendments to Act 292 are necessary.

Accordingly, the purpose of this Act is to:

(1) Extend the start date of the restriction on the use of restrictive housing in contracted correctional facilities under Act 292, Session Laws of 2025, to July 1, 2027;

(2) Extend the deadline for establishment of the restrictive housing legislative working group to August 1, 2026;

(3) Extend the date by which the department of corrections and rehabilitation may implement recommendations of the restrictive housing working group to December 1, 2028;

(4) Amend certain procedures for restrictive housing, including repealing certain procedures for restrictive housing, restrictions on circumstances under which restrictive housing is permitted, and reporting requirements; and

(5) Repeal the requirement that the restrictive housing working group make recommendations to the legislature by January 8, 2027.

SECTION 2. Section 353-41, Hawaii Revised Statutes, is amended to read as follows:

"**[~~[~~]§353-41[~~]~~] Restrictive housing; restrictions on use; policies and procedures.** (a) Beginning July 1, [~~2026,~~] 2027, except as otherwise provided in subsection (d), the use of

restrictive housing in correctional facilities shall be restricted as follows:

(1) A committed person shall not be placed in restrictive housing unless there is reasonable cause to believe that the committed person would create a substantial risk of immediate serious harm to the committed person's self or another, as evidenced by recent threats or conduct, and that a less restrictive intervention would be insufficient to reduce this risk; [~~provided that the correctional facility shall bear the burden of establishing the foregoing by clear and convincing evidence;~~]

(2) A committed person shall only be held in restrictive housing pursuant to initial procedures and reviews that provide timely, fair, and meaningful opportunities for the committed person to contest the [~~confinement.~~] restrictive housing. These procedures and reviews shall include [~~the right to~~]:

(A) An initial [~~hearing~~] review held within twenty-four hours of placement in restrictive housing, in the absence of exceptional

circumstances, unavoidable delays, or reasonable postponements;

[~~(B) Appear at the hearing;~~

~~(C) Be represented at the hearing;~~

~~(D)~~] (B) An independent hearings officer; and

[~~(E)~~] (C) [~~Receive a~~] A written statement of reasons for the decision made [~~at the hearing~~];

(3) The final decision to place a committed person in restrictive housing shall be made by the warden or the warden's designee[~~,~~] unless medically indicated;

(4) A committed person shall not be placed or held in restrictive housing if the warden or the warden's designee determines that the committed person no longer meets the criteria for the confinement[~~,~~] unless medically determined by a clinician;

[~~(5) A disciplinary sanction of restrictive housing imposed on a committed person who is subsequently removed from restrictive housing pursuant to this subsection shall be deemed completed;~~

~~(6) During a facility-wide lockdown, a committed person shall not be placed in restrictive housing for more~~

~~than thirty consecutive days, or for more than forty-five days total during any sixty-day period;~~

[~~(7)~~] (5) Cells or other holding or living space used for restrictive housing shall be properly ventilated, lit, temperature-controlled, clean, and equipped with properly functioning sanitary fixtures;

[~~(8)~~] (6) A correctional facility shall strive to maximize the amount of time spent outside of the cell by a committed person held in restrictive housing by providing the committed person with access to recreation, education, clinically appropriate treatment therapies, skill-building activities, and social interaction with staff and other committed persons, as appropriate;

[~~(9)~~] (7) A committed person held in restrictive housing shall not be denied access to:

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

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

(C) Legal counsel;

[~~(10)~~] (8) Each committed person held in restrictive housing shall receive a written copy of the committed person's sanction and the criteria for a pathway back into the general population. The department shall ensure that the committed person understands the reason for the sanction and the criteria for the pathway back into the general population. The committed person's case manager shall work with the committed person in restrictive housing to develop a plan of action to [~~reduce the committed person's violations,~~] return the committed person to the general population[~~,~~] and work on the committed person's rehabilitation; and

[~~(11)~~] (9) [~~A~~] Facilities shall attempt to ensure that a committed person shall not be released directly from restrictive housing to the community [~~during the final one hundred eighty days of the committed person's term of incarceration,~~] unless necessary for the safety of the committed person, staff, other committed persons, or the public. This paragraph shall not be interpreted to delay a committed person's scheduled release.

(b) Beginning July 1, [~~2026,~~] 2027, except as otherwise provided in subsection (c), a committed person who is twenty-one years of age or younger, or is pregnant, in the postpartum period, or recently suffered a miscarriage or terminated pregnancy shall not be placed in restrictive housing; provided that a committed person who:

(1) Is twenty-one years of age or younger, has a disability based on mental illness, or has a developmental disability shall:

(A) Not be subject to discipline for refusing treatment or medication, or for engaging in self-harm [~~or related conduct~~] or threatening to do so[~~; and~~] unless medically determined; and

(B) Be screened by a correctional facility clinician or the appropriate screening service pursuant to rules and, if found to meet the criteria for civil commitment, shall be placed in a specialized unit designated by the [~~director or deputy director~~] facility warden as ordered by the clinician of the department, or civilly committed by the courts to the least restrictive

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

(2) Is pregnant, is in the postpartum period, or recently suffered a miscarriage or terminated a pregnancy, shall alternatively be placed in an appropriate medical or other unit designated by the [~~director or deputy director~~] facility warden as ordered by the clinician of the department, but only if the committed person would otherwise have been placed in restrictive housing.

(c) Beginning July 1, [~~2026,~~] 2027, the use of restrictive housing in correctional facilities shall be permitted only under the following limited circumstances:

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

~~document the specific reasons that any facility-wide lockdown was necessary for more than twenty-four hours, and the specific reasons why less restrictive interventions were insufficient to accomplish the facility's safety goals. Within twelve hours of a decision to extend a facility-wide lockdown beyond twenty-four hours, the director or deputy director of the department shall publish the foregoing reasons on the department's website and shall provide meaningful notice to the legislature of the reasons for the lockdown;~~

~~(2)~~] (1) The warden [~~or~~], the warden's designee, or the clinician determines that a committed person should be placed in [~~emergency confinement;~~] restrictive housing; provided that[~~:~~

~~(A) A committed person shall not be held in emergency confinement for more than forty-eight hours; and~~

~~(B) A~~] a committed person placed in [~~emergency confinement~~] restrictive housing shall receive an initial medical and mental health [~~evaluation~~] screen within twelve hours and a personal and

comprehensive medical and mental health examination conducted by a clinician within [~~twenty-four~~] seventy-two hours[~~. Reports of these evaluations shall be immediately provided to the warden or the warden's designee~~];

[~~(3)~~] (2) A [~~physician,~~] clinician, based upon the [~~physician's~~] clinician's personal examination of a committed person, determines that the committed person should be placed or held in medical isolation[~~; provided that any decision to place or hold a committed person in medical isolation due to a mental health emergency shall be made by a clinician and based upon the clinician's personal examination of the committed person~~]. In any case of medical isolation occurring under this paragraph, a clinical review shall be conducted [~~at least every twelve hours and~~] as clinically indicated. A committed person in medical isolation due to a mental health emergency pursuant to this paragraph shall be placed in a mental health unit [~~designated~~] by the [~~director or deputy director~~] mental health clinician of the

department[~~,~~]. If a unit is not available at the facility, a committed person may be transferred to a facility with higher level of care;

[~~(4)~~] (3) The warden or the warden's designee determines that a committed person should be placed in protective custody; provided that:

(A) A committed person may be placed in voluntary protective custody only when the committed person has provided voluntary[~~, informed, and written consent~~] information and there is reasonable cause to believe that protective custody is necessary to prevent reasonably foreseeable harm. When a committed person [~~makes a~~] provides voluntary[~~, informed, and~~] information and a written request to be placed in protective custody and the request is denied, the correctional facility shall bear the burden of establishing a basis for denying the request;

(B) A committed person may be placed in involuntary protective custody only when the correctional facility is able to establish by clear and

convincing [~~evidence~~] information that protective custody is necessary to prevent reasonably foreseeable harm and that a less restrictive intervention would be insufficient to prevent the harm;

(C) [~~A~~] The department shall strive to provide a committed person placed in protective custody [~~shall be provided~~] opportunities for activities, movement, and social interaction, in a manner consistent with ensuring the committed person's safety and the safety of other persons, that are comparable to the opportunities provided to committed persons in the facility's general population;

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

(E) A committed person who is currently or may be placed in voluntary protective custody may request to opt out of that status by providing

voluntary[~~, informed, and written refusal of that status;~~] information stipulating the person's request for refusal; and

(F) Before placing a committed person in protective custody, the warden or the warden's designee shall fully review the information surrounding the reasons and use of protective custody and, if possible, implement a less restrictive intervention[~~, including~~]; provided further that less restrictive interventions may include transfer to the general population of another facility or to a special-purpose housing unit for committed persons who face similar threats, unless the committed person poses an extraordinary security risk so great that transferring the committed person would be insufficient to ensure the committed person's safety; and

[~~(5)~~] (4) The warden or the warden's designee determines that a committed person should be placed in

restrictive housing pending investigation of an alleged disciplinary offense; provided that:

(A) [~~The~~] A committed person's placement in restrictive housing is pursuant to approval granted by the warden or the warden's designee [~~in an emergency situation, or is~~] because the committed person's presence in the facility's general population while the investigation is ongoing poses a danger to the committed person, staff, other committed persons, or the public; provided further that the determination of danger shall be based upon a consideration of the seriousness of the committed person's alleged offense, including whether the offense involved violence or escape, or posed a threat to institutional safety by encouraging other persons to engage in misconduct;

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

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

[~~(D)~~] (C) A committed person who has been placed in restrictive housing pending investigation of an alleged disciplinary offense shall be considered for release to the facility's general population if upon review of the initial incident, the threat to the safety of the inmate, staff, other inmates, and the general facility would not be jeopardized, the committed person demonstrates good behavior while in restrictive housing[~~.~~], and the threat has been mitigated. If the committed person is found guilty of the disciplinary offense, the committed person's good behavior shall be considered when determining the appropriate penalty for the offense.

(d) No later than July 1, [~~2026,~~] 2027, the department shall develop written policies and implement procedures, as necessary and appropriate, to effectuate this section, including:

(1) Establishing less restrictive interventions as alternatives to restrictive housing, including separation from other committed persons, transfer to other correctional facilities, and any other sanction not involving restrictive housing that is authorized by the department's policies and procedures; provided that any temporary restrictions on a committed person's privileges or access to resources, including religious services, mail and telephone privileges, visitation by contacts, and outdoor or recreation access, [~~shall be imposed only when necessary to ensure the safety of the committed person or other persons, and~~] shall not restrict the committed person's access to food, water, basic necessities, or legal assistance;

(2) Requiring periodic training of disciplinary staff and all other staff who interact with committed persons

held in restrictive housing; provided that the training:

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

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

(3) Requiring documentation of all decisions, procedures, and reviews of committed persons placed in restrictive housing; and

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

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

~~(A) Describe the nature and extent of each correctional facility's use of restrictive housing and include data on the age, sex, gender identity, ethnicity, incidence of mental illness,~~

~~and type of confinement status for committed persons placed in restrictive housing;~~

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

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

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

~~(6) Updating the department's corrections administration policy and procedures manual, as necessary and appropriate, to comply with this section, including the requirement to use appropriate alternatives to restrictive housing for committed persons.~~

~~(c) Following the initial hearing for the placement of an individual into restrictive housing, the department shall immediately notify and transmit all relevant documentation to~~

~~the Hawaii correctional system oversight commission. The Hawaii correctional system oversight commission shall review the determinations regarding the imposition, ongoing use, and termination of restrictive housing for fairness, impartiality, alignment with best practices, and availability of resources and adequate staffing, and shall issue annual reports on the utilization thereof.~~

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

[~~(f)~~] (e) As used in this section[~~:~~

~~"Correctional facility" means a state prison, other penal institution, or an institution or a facility designated by the department as a place of confinement under this chapter. "Correctional facility" includes community correctional centers,~~

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

~~"Restrictive~~], "restrictive housing" is defined as occurring when all of the following conditions are present:

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

(2) The confinement occurs in a cell or similarly physically restrictive holding or living space, whether alone or with one or more other committed persons, for [~~twenty~~] twenty-two hours or more per day; and

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

SECTION 3. Act 292, Session Laws of Hawaii 2025, is amended by amending section 3 to read as follows:

"SECTION 3. (a) A restrictive housing legislative working group shall be convened by August 1, [~~2025, to:~~

~~(1)~~ ~~Review,~~] 2026, to review, consider, and identify laws, policies, and procedures regarding restrictive housing for members of vulnerable populations including committed persons who:

[~~(A)~~] (1) Are sixty years of age or older;

[~~(B)~~] (2) Have a physical or mental disability, a history of psychiatric hospitalization, or recently exhibited conduct, including serious self-mutilation, that indicates the need for further observation or evaluation to determine the presence of mental illness;

[~~(C)~~] (3) Have a developmental disability, as defined in section 333F-1, Hawaii Revised Statutes;

[~~(D)~~] (4) Have a serious medical condition that cannot be effectively treated while the committed person is in restrictive housing; or

[~~(E)~~] (5) Have a significant auditory or visual impairment[~~; or~~

~~(F) Is perceived to be lesbian, gay, bisexual, transgender, or intersex; and~~

~~(2) By January 8, 2027, make recommendations to the legislature regarding more comprehensive laws, policies, and procedures regarding restrictive housing for members of vulnerable populations~~].

(b) The restrictive housing legislative working group shall consist of the following members, or their designees:

(1) The chairperson of the house of representatives standing committee with primary jurisdiction over corrections and rehabilitation, who shall serve as co-chairperson;

(2) The chairperson of the senate standing committee with primary jurisdiction over corrections and rehabilitation, who shall serve as co-chairperson;

(3) The director of corrections and rehabilitation;

(4) The senior advisor for mental health and the justice system in the office of the governor; and

(5) A commissioner on the Hawaii correctional system oversight commission.

(c) The co-chairpersons of the working group shall invite the following individuals to serve as members of the working group:

(1) A representative of the office of Hawaiian affairs;

(2) A representative from the American Civil Liberties Union of Hawaii; and

(3) A representative from the Community Alliance on Prisons[~~; and~~

~~(4) Any other individuals identified by the chairpersons of the working group~~].

(d) The working group shall be dissolved on January 8, [~~2027,~~] 2028, or upon submission of its final report to the legislature, whichever is later.

(e) The department of corrections and rehabilitation may implement, if practicable by December 1, [~~2027,~~] 2028, recommended policies and procedures of the restrictive housing legislative working group regarding the placement of committed persons who are members of certain vulnerable populations into restrictive housing and develop transition and service plans for these committed persons in restrictive housing."

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

INTRODUCED BY: _____

S.B. NO. 2381

Report Title:
Corrections; Restrictive Housing Requirements; Working Group

Description:
Extends the effective date of restrictions on the use of restrictive housing in correctional facilities to 7/1/2027. Extends the establishment of the Restrictive Housing Legislative Working Group to 8/1/2026. Extends the date that the Department of Corrections and Rehabilitation may implement recommendations of the working group to 12/1/2028. Amends procedures for restrictive housing. Amends circumstances under which restrictive housing may be used. Repeals requirements for the Department of Corrections and Rehabilitation to post quarterly reports on the Department's website, update its policy and procedures manual in compliance with the restrictive housing restrictions, and report to the Hawaii Correctional System Oversight Commission. Repeals requirements for the Hawaii Correctional System Oversight Commission to review and monitor housing placements. Repeals the requirement that the Restrictive Housing Working Group make recommendations to the Legislature by 1/1/2027.

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