

ASSEMBLY, No. 547

STATE OF NEW JERSEY

217th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2016 SESSION

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SYNOPSIS

Restricts use of isolated confinement in correctional facilities.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



(Sponsorship Updated As Of: 9/9/2016)

1 AN ACT concerning restrictions on isolated confinement in
2 correctional facilities and supplementing Title 30 of the Revised
3 Statutes.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

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8 1. This act shall be known and may be cited as the “Isolated
9 Confinement Restriction Act.”

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11 2. The Legislature finds and declares that:

12 a. The use of isolated confinement in this State’s correctional
13 facilities should be restricted to ensure the safe and humane
14 operation of these facilities, consistent with the New Jersey
15 Constitution, the laws and public policies of this State, the mission
16 of the correctional system, evolving medical knowledge, and human
17 rights standards of decency.

18 b. Isolated confinement should only be used when necessary,
19 and should not be used against vulnerable populations or under
20 conditions or for time periods that foster psychological trauma,
21 psychiatric disorders, or serious, long-term damage to an isolated
22 person’s brain.

23 c. The standards established in this act should apply to all
24 persons detained in correctional facilities under the jurisdiction of
25 this State or any subdivision, regardless of the civil or criminal
26 nature of the charges against them.

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28 3. For the purposes of this act:

29 “Clinician” means a State licensed physician, except if the
30 clinician makes mental health evaluations, the term shall mean a
31 State licensed psychiatrist or psychologist, or an advanced practice
32 nurse or clinical nurse specialist with a specialty in psychiatric
33 nursing.

34 “Commissioner” means the Commissioner of Corrections.

35 “Correctional facility” means any State correctional facility or
36 county correctional facility, and any State, county, or private
37 facility detaining persons pursuant to any intergovernmental service
38 agreement or other contract with any State, county, or federal
39 agency, including, but not limited to, United States Immigration and
40 Customs Enforcement.

41 “County correctional facility” means a county jail, penitentiary,
42 prison, or workhouse.

43 “Emergency confinement” means the isolated confinement of an
44 inmate in a correctional facility when there is reasonable cause to
45 believe that this confinement is necessary for reducing a substantial
46 risk of imminent serious harm to the inmate or others.

1 “Facility administrator” or “administrator” means the chief
2 operating officer or senior administrative designee of a correctional
3 facility.

4 “Inmate” means a person confined in a correctional facility.

5 “Isolated confinement” means confinement of an inmate in a
6 correctional facility, pursuant to disciplinary, administrative,
7 protective, investigative, medical, or other classification, in a cell or
8 similarly confined holding or living space, alone or with other
9 inmates, for approximately 20 hours or more per day, with severely
10 restricted activity, movement, and social interaction.

11 “Less restrictive intervention” means a placement or conditions
12 of confinement, or both, in the current or an alternative correctional
13 facility, under conditions less restrictive of an inmate's movement,
14 privileges, activities, or social interactions.

15 “Medical isolation” means isolated confinement of an inmate for
16 medical reasons, including a mental health emergency or when
17 necessary for preventing the spread of a communicable disease.

18 “Member of a vulnerable population” means any inmate who:

19 a. is 21 years of age or younger;

20 b. is 55 years of age or older;

21 c. has a disability based on a mental illness, as defined in
22 subsection r. of section 2 of P.L.1987, c.116 (C.30:4-27.2), a history
23 of psychiatric hospitalization, or has recently exhibited conduct,
24 including but not limited to serious self mutilation, indicating the
25 need for further observation or evaluation to determine the presence
26 of mental illness;

27 d. has a developmental disability, as defined in subsection b. of
28 section 3 of P.L.1985, c.145 (C.30:6D-25);

29 e. has a serious medical condition which cannot effectively be
30 treated in isolated confinement;

31 f. is pregnant; or

32 g. has a significant auditory or visual impairment.

33 “Protective custody” means confinement of an inmate in a cell or
34 similarly confined holding or living space, under conditions
35 necessary to protect the inmate or others.

36 “State correctional facility” means a State prison or other penal
37 institution or an institution or facility designated by the
38 commissioner as a place of confinement under section 2 of
39 P.L.1969, c.22. (C.30:4-91.2)

40

41 4. a. The use of isolated confinement in correctional facilities
42 in this State shall be restricted as follows:

43 (1) Except as otherwise provided in paragraphs (1), (3), and (4)
44 of subsection d. of this section, an inmate shall not be placed in
45 isolated confinement unless there is reasonable cause to believe that
46 the inmate would create a substantial risk of immediate serious
47 harm to himself or another, and a less restrictive intervention would
48 be insufficient to reduce this risk. Except as otherwise provided in

1 paragraphs (1), (3), and (4) of subsection d. of this section, the
2 correctional facility shall bear the burden of establishing this
3 standard.

4 (2) Except as otherwise provided in paragraphs (1), (3), and (4)
5 of subsection d. of this section, an inmate shall not be placed in
6 isolated confinement for non-disciplinary reasons.

7 (3) Except as otherwise provided in paragraph (1) of subsection
8 d. of this section, an inmate shall not be placed in isolated
9 confinement before receiving a personal and comprehensive
10 medical and mental health examination conducted by a clinician.

11 (4) Except as otherwise provided in paragraph (1) of subsection
12 d. of this section, an inmate shall only be held in isolated
13 confinement pursuant to initial procedures and reviews which
14 provide timely, fair and meaningful opportunities for the inmate to
15 contest the confinement. These procedures shall include the right to
16 an initial hearing within 72 hours of placement and a review every
17 15 days thereafter, in the absence of exceptional circumstances,
18 unavoidable delays, or reasonable postponements; the right to
19 appear at the hearing, the right to be represented at the hearing, an
20 independent hearing officer, and a written statement of reasons for
21 the decision made at the hearing.

22 (5) Except as otherwise provided in paragraph (3) of subsection
23 d. of this section, the final decision to place an inmate in isolated
24 confinement shall be made by the facility administrator.

25 (6) Except as otherwise provided in paragraph (7) of subsection
26 a. of this section and paragraph (3) of subsection d. of this section,
27 an inmate shall not be placed or retained in isolated confinement if
28 the facility administrator determines that the inmate no longer
29 meets the standard for the confinement.

30 (7) A clinician shall evaluate each inmate placed in isolated
31 confinement on a daily basis to determine whether the inmate is a
32 member of a vulnerable population. Except as otherwise provided
33 in subsection d. of this section, an inmate determined to be a
34 member of a vulnerable population shall be immediately removed
35 from isolated confinement and moved to an appropriate placement.

36 (8) A disciplinary sanction of isolated confinement which has
37 been imposed on an inmate who is removed from isolated
38 confinement pursuant to paragraph (7) of subsection a. of this
39 section shall be deemed to be satisfied.

40 (9) Except as otherwise provided in paragraph (1) of subsection
41 d. of this section during a facility-wide lock down, an inmate shall
42 not be placed in isolated confinement for more than 15 consecutive
43 days, or for more than 20 days during any 60-day period.

44 (10) Cells or other holding or living space used for isolated
45 confinement are to be properly ventilated, lit, temperature-
46 controlled, clean, and equipped with properly functioning sanitary
47 fixtures.

1 b. Except as otherwise provided in subsection d. of this section,
2 an inmate who is a member of a vulnerable population shall not be
3 placed in isolated confinement.

4 (1) A person who is a member of a vulnerable population
5 because the person is 21 years of age or younger, has a disability
6 based on mental illness, or has a developmental disability:

7 (a) shall not be subject to discipline for refusing treatment or
8 medication, or for self-harming or related conduct or threats of this
9 conduct; and

10 (b) who would otherwise be placed in isolated confinement shall
11 alternately be placed in a specialized unit, as designated by the
12 commissioner, or be civilly admitted or committed to an appropriate
13 facility designated by the Department of Human Services.

14 (2) A person who is a member of a vulnerable population
15 because the person is 55 years of age or older, has a serious medical
16 condition which cannot be effectively treated in isolated
17 confinement, or is pregnant who would otherwise be placed in
18 isolated confinement shall alternately be placed in an appropriate
19 medical or other unit, as designated by the commissioner.

20 c. An inmate shall not be placed in isolated confinement or in
21 any other cell or other holding or living space, in any facility, with
22 one or more inmates if there is reasonable cause to believe that
23 there is a risk of harm or harassment, intimidation, extortion, or
24 other physical or emotional abuse to that inmate or another inmate
25 in that placement.

26 d. Isolated confinement shall be permitted under limited
27 circumstances as follows:

28 (1) The facility administrator determines that a facility-wide
29 lock down is required to ensure the safety of inmates in the facility
30 until the administrator determines that these circumstances no
31 longer exist. The facility administrator shall document specific
32 reasons why any lockdown is necessary for more than 24 hours, and
33 why less restrictive interventions are insufficient to accomplish the
34 facility's safety goals. Within six hours of a decision to extend a
35 lockdown beyond 24 hours, the commissioner shall publish the
36 reasons on the Department of Corrections website and provide
37 meaningful notice of the reasons for the lockdown to the
38 Legislature.

39 (2) The facility administrator determines that an inmate should
40 be placed in emergency confinement.

41 (a) An inmate shall not be held in emergency confinement for
42 more than 24 hours; and

43 (b) An inmate held in emergency confinement shall receive an
44 initial medical and mental health evaluation within two hours, and a
45 personal and comprehensive medical and mental health evaluation
46 within 24 hours. Reports of these evaluations shall be immediately
47 provided to the facility administrator.

1 (3) A physician, based on a personal examination, determines
2 that an inmate should be placed or retained in medical isolation.

3 The decision to place and retain an inmate in medical isolation
4 due to a mental health emergency shall be made by a clinician based
5 on a personal examination. In any case of isolation under this
6 paragraph, a clinical review shall be conducted at least every six
7 hours and as indicated. An inmate in medical isolation pursuant to
8 this paragraph shall be placed in a mental health unit as designated
9 by the commissioner.

10 (4) The facility administrator determines that an inmate should
11 be placed in protective custody as follows:

12 (a) The inmate may be placed in voluntary protective custody
13 only with informed, voluntary, written consent and when there is
14 reasonable cause to believe that confinement is necessary to prevent
15 reasonably foreseeable harm. When an inmate makes an informed
16 voluntary written request for protective custody, the correctional
17 facility shall bear the burden of establishing a basis for refusing the
18 request.

19 (b) The inmate may be placed in involuntary protective custody
20 only when there is clear and convincing evidence that confinement
21 is necessary to prevent reasonably foreseeable harm and that no less
22 restrictive intervention would be sufficient to prevent such harm.

23 (c) An inmate placed in protective custody shall receive
24 comparable opportunities for activities, movement, and social
25 interaction, consistent with their safety and the safety of others, as
26 are inmates in the general population of the facility.

27 (d) An inmate subject to removal from protective custody shall
28 be provided with a timely, fair, and meaningful opportunity to
29 contest the removal.

30 (e) An inmate who may be placed or currently is in voluntary
31 protective custody may opt out of that status by providing informed,
32 voluntary, written refusal of that status.

33 (5) A member of a vulnerable population shall not be placed in
34 isolated confinement with one or more inmates, except with the
35 inmate's informed, voluntary, written consent.

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37 5. Within 90 days of the effective date of this act, the
38 commissioner shall:

39 a. develop policies and implement procedures for the review of
40 inmates placed in isolated confinement and submit proposed
41 regulations for promulgation as required by section 6 of this act;

42 b. initiate a review of each inmate placed in isolated
43 confinement pursuant to the policies and procedures developed and
44 implemented under subsection a. of this section; and

45 c. develop a plan for providing step-down and transitional
46 units, programs, and staffing patterns to accommodate inmates
47 currently placed in isolated confinement.

1 6. In accordance with the "Administrative Procedure Act,"
2 P.L.1968, c.410 (C.52:14B-1 et seq.), the commissioner shall
3 promulgate regulations to effectuate the provisions of this act. The
4 regulations shall include but not be limited to:

5 a. Establishing less restrictive interventions to isolated
6 confinement, including separation from other inmates; transfer to
7 other correctional facilities; and any non-isolated confinement
8 sanction authorized by Department of Corrections regulations;
9 restrictions on religious, mail, and telephone privileges, visit
10 contacts, or outdoor and recreation access shall only be imposed as
11 is necessary for the safety of the inmate or others, but shall not
12 restrict access to food, basic necessities, or legal access;

13 b. Requiring training of disciplinary staff and all staff working
14 with inmates in isolated confinement and requiring that this training
15 include:

16 (1) assistance from appropriate professionals in the Department
17 of Human Services to periodically train all staff working with
18 inmates in isolated confinement; and

19 (2) standards for isolated confinement, the identification of
20 developmental disabilities, and the symptoms of mental illness,
21 including trauma disorders, and methods of safe responses to people
22 in distress;

23 c. Requiring documentation of all decisions, procedures, and
24 reviews of inmates placed in isolated confinement;

25 d. Requiring monitoring of compliance with all rules governing
26 cells, units, and other places where inmates are placed in isolated
27 confinement; and

28 e. Requiring posting on the official website of the Department of
29 Corrections of quarterly reports on the use of isolated confinement, by
30 age, sex, gender identity, ethnicity, incidence of mental illness, and
31 type of confinement status, at each facility; these reports shall include
32 the population on the last day of each quarter and a non-duplicative
33 cumulative count of people exposed to isolated confinement for each
34 fiscal year. These inmate reports also shall include the incidence of
35 emergency confinement, self-harm, suicide, and assault in any isolated
36 confinement unit, as well as explanations for each instance of facility-
37 wide lockdown. These reports shall not include personally identifiable
38 information regarding any inmate.

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40 7. This act shall take effect on the first day of the thirteenth
41 month next following enactment, except the commissioner may take
42 any anticipatory administrative action in advance as shall be
43 necessary for the implementation of this act.

STATEMENT

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This bill restricts the use of isolated confinement in correctional facilities in New Jersey.

The bill specifically prohibits inmates incarcerated or detained in correctional facilities from being placed in isolated confinement unless there is reasonable cause to believe that the inmate or others would be at risk of serious harm, and any less restrictive intervention would be insufficient to reduce that risk. The correctional facility is responsible for establishing the justification for isolated confinement. Inmates may not be placed in isolated confinement for non-disciplinary reasons. Inmates are required to receive a personal and comprehensive medical and mental health examination, conducted by a clinician, before being placed in isolated confinement.

Under the bill, initial procedures and reviews providing timely, fair, and meaningful opportunities for an inmate to contest the confinement are required to be made available. The procedures are to include the right to an initial hearing within 72 hours of placement and reviews every 15 days thereafter, in the absence of exceptional circumstances, unavoidable delays, or reasonable postponements; the right to appear at the hearing; the right to be represented at the hearing; an independent hearing officer; and a written statement of reasons for the decision made at the hearing.

Except in cases involving medical isolation, the final decision to place an inmate in isolated confinement is to be made by the facility administrator. An inmate is to be removed from isolated confinement if the administrator determines that the inmate no longer meets the standard for isolated confinement.

A clinician is required to evaluate each inmate placed in isolated confinement, on a daily basis, to determine whether the inmate is a member of a vulnerable population. An inmate determined to be a member of a vulnerable population shall be immediately removed from isolated confinement to an appropriate placement. Under the bill, an inmate is a member of a vulnerable population if he or she is 21 years of age or younger; is 55 years of age or older; has a disability based on a mental illness, a history of psychiatric hospitalization, or has recently exhibited conduct, including but not limited to serious self-mutilation, indicating the need for further observation or evaluation to determine the presence of mental illness; has a developmental disability; has a serious medical condition which cannot effectively be treated in isolated confinement; is pregnant; or has a significant visual or auditory impairment.

No inmate is to be placed in isolated confinement for more than 15 consecutive days, or for more than 20 days during any 60-day period under the bill. Cells or other holding or living spaces used for isolated confinement are to be properly ventilated, lit,

1 temperature-controlled, clean, and equipped with properly
2 functioning sanitary fixtures.

3 The bill defines isolated confinement as “confinement of an
4 inmate in a correctional facility, pursuant to disciplinary,
5 administrative, protective, investigative, medical, or other
6 classification, in a cell or similarly confined holding or living space,
7 alone or with other inmates, for approximately 20 hours or more per
8 day with severely restricted activity, movement, and social
9 interaction.”

10 The bill provides for certain exceptions to the restrictions on
11 isolated confinement for facility-wide lock downs, emergency
12 confinement, medical isolation, and protective custody.