

# SENATE, No. 3261

## STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED DECEMBER 6, 2018

**Sponsored by:**

**Senator NELLIE POU**

**District 35 (Bergen and Passaic)**

**Senator SANDRA B. CUNNINGHAM**

**District 31 (Hudson)**

**Co-Sponsored by:**

**Senators Singleton, Cruz-Perez, Turner, Gill and Greenstein**

**SYNOPSIS**

Restricts use of isolated confinement in correctional facilities.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 6/4/2019)**

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:

7

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

10

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.

27 d. Citing the devastating and lasting psychological  
28 consequences of solitary confinement on persons detained in  
29 correctional facilities, President Obama recently adopted reforms to  
30 reduce its use in federal correctional facilities, including banning  
31 restrictive housing for low-level offenders and juveniles; decreasing  
32 the maximum length of time an inmate may be held in restricted  
33 housing from 365 days to 60 days; and increasing time spent  
34 outside the cell for inmates held in restrictive housing.

35

36 3. For the purposes of this act:

37 “Clinician” means a State licensed physician, except if the  
38 clinician makes mental health evaluations, the term shall mean a  
39 State licensed psychiatrist or psychologist, or an advanced practice  
40 nurse or clinical nurse specialist with a specialty in psychiatric  
41 nursing.

42 “Commissioner” means the Commissioner of Corrections.

43 “Correctional facility” means any State correctional facility or  
44 county correctional facility, and any State, county, or private  
45 facility detaining persons pursuant to any intergovernmental service  
46 agreement or other contract with any State, county, or federal  
47 agency, including, but not limited to, United States Immigration and  
48 Customs Enforcement.

1 "County correctional facility" means a county jail, penitentiary,  
2 prison, or workhouse.

3 "Emergency confinement" means the isolated confinement of an  
4 inmate in a correctional facility when there is reasonable cause to  
5 believe that this confinement is necessary for reducing a substantial  
6 risk of imminent serious harm to the inmate or others, as evidenced  
7 by recent conduct.

8 "Facility administrator" or "administrator" means the chief  
9 operating officer or senior administrative designee of a correctional  
10 facility.

11 "Inmate" means a person confined in a correctional facility.

12 "Isolated confinement" means confinement of an inmate in a  
13 correctional facility, pursuant to disciplinary, administrative,  
14 protective, investigative, medical, or other classification, in a cell or  
15 similarly confined holding or living space, alone or with other  
16 inmates, for approximately 20 hours or more per day, with severely  
17 restricted activity, movement, and social interaction.

18 "Less restrictive intervention" means a placement or conditions  
19 of confinement, or both, in the current or an alternative correctional  
20 facility, under conditions less restrictive of an inmate's movement,  
21 privileges, activities, or social interactions.

22 "Medical isolation" means isolated confinement of an inmate for  
23 medical reasons, including a mental health emergency or when  
24 necessary for preventing the spread of a communicable disease.

25 "Medical staff" means State licensed psychiatrists, physician  
26 assistants, advanced practice nurses or clinical nurse specialists or,  
27 for mental health evaluations or decisions, those nurses with a  
28 specialty in psychiatric nursing, or comparably credentialed  
29 employees or contractors employed to provide healthcare.

30 "Member of a vulnerable population" means any inmate who:

31 a. is 21 years of age or younger;

32 b. is 65 years of age or older;

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

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

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

43 f. is pregnant, is in the postpartum period, or has recently  
44 suffered a miscarriage or terminated a pregnancy;

45 g. has a significant auditory or visual impairment; or

46 h. is perceived to be lesbian, gay, bisexual, transgender, or  
47 intersex.

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

4       "State correctional facility" means a State prison or other penal  
5 institution or an institution or facility designated by the  
6 commissioner as a place of confinement under section 2 of  
7 P.L.1969, c.22. (C.30:4-91.2).

8

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

11       (1) Except as otherwise provided in paragraphs (1), (3), and (4)  
12 of subsection d. of this section, an inmate shall not be placed in  
13 isolated confinement unless there is reasonable cause to believe that  
14 the inmate would create a substantial risk of immediate serious  
15 harm to himself or another, as evidenced by recent threats or  
16 conduct, and a less restrictive intervention would be insufficient to  
17 reduce this risk. Except as otherwise provided in paragraphs (1),  
18 (3), and (4) of subsection d. of this section, the correctional facility  
19 shall bear the burden of establishing this standard by clear and  
20 convincing evidence.

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

24       (3) Except as otherwise provided in paragraph (1) of subsection  
25 d. of this section, an inmate shall not be placed in isolated  
26 confinement before receiving a personal and comprehensive  
27 medical and mental health examination conducted by a clinician;  
28 however, in a county correctional facility, a preliminary  
29 examination shall be conducted by a member of the medical staff  
30 within 12 hours of confinement and the clinical examination shall  
31 be conducted within 48 hours of confinement.

32       (4) Except as otherwise provided in paragraph (1) of subsection  
33 d. of this section, an inmate shall only be held in isolated  
34 confinement pursuant to initial procedures and reviews which  
35 provide timely, fair and meaningful opportunities for the inmate to  
36 contest the confinement. These procedures shall include the right to  
37 an initial hearing within 72 hours of placement and a review every  
38 15 days thereafter, in the absence of exceptional circumstances,  
39 unavoidable delays, or reasonable postponements; the right to  
40 appear at the hearing; the right to be represented at the hearing; an  
41 independent hearing officer; and a written statement of reasons for  
42 the decision made at the hearing.

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

46       (6) Except as otherwise provided in paragraph (7) of subsection  
47 a. of this section and paragraph (3) of subsection d. of this section,  
48 an inmate shall not be placed or retained in isolated confinement if

1 the facility administrator determines that the inmate no longer  
2 meets the standard for the confinement.

3 (7) A clinician shall evaluate each inmate placed in isolated  
4 confinement on a daily basis, in a confidential setting outside of the  
5 cell whenever possible, to determine whether the inmate is a  
6 member of a vulnerable population; however, in a county  
7 correctional facility, an inmate in isolated confinement shall be  
8 evaluated by a member of the medical staff as frequently as  
9 clinically indicated, but at least once a week. Except as otherwise  
10 provided in subsection d. of this section, an inmate determined to be  
11 a member of a vulnerable population shall be immediately removed  
12 from isolated confinement and moved to an appropriate placement.

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

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

21 (10) Cells or other holding or living space used for isolated  
22 confinement are to be properly ventilated, lit, temperature-  
23 controlled, clean, and equipped with properly functioning sanitary  
24 fixtures.

25 (11) A correctional facility shall maximize the amount of time  
26 that an inmate held in isolated confinement spends outside of the  
27 cell by providing, as appropriate, access to recreation, education,  
28 clinically appropriate treatment therapies, skill-building activities,  
29 and social interaction with staff and other inmates.

30 (12) An inmate held in isolated confinement shall not be denied  
31 access to food, water, or any other basic necessity.

32 (13) An inmate held in isolated confinement shall not be denied  
33 access to appropriate medical care, including emergency medical  
34 care.

35 (14) An inmate shall not be directly released from isolated  
36 confinement to the community during the final 180 days of the  
37 inmate's term of incarceration, unless it is necessary for the safety  
38 of the inmate, staff, other inmates, or the public.

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

42 (1) An inmate who is a member of a vulnerable population  
43 because the inmate is 21 years of age or younger, has a disability  
44 based on mental illness, or has a developmental disability:

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

48 (b) who would otherwise be placed in isolated confinement shall  
49 be screened by a correctional facility clinician or the appropriate

1 screening service pursuant to the New Jersey Administrative Code  
2 and, if found to meet the standards of civil commitment, shall be  
3 placed in a specialized unit, as designated by the commissioner, or  
4 civilly committed to the least restrictive appropriate short term care  
5 or psychiatric facility designated by the Department of Human  
6 Services.

7 (2) An inmate who is a member of a vulnerable population  
8 because the inmate is 65 years of age or older, has a serious medical  
9 condition which cannot be effectively treated in isolated  
10 confinement, or is pregnant, is in the postpartum period, or has  
11 recently suffered a miscarriage or terminated a pregnancy, who  
12 would otherwise be placed in isolated confinement, shall alternately  
13 be placed in an appropriate medical or other unit as designated by  
14 the commissioner. The requirements contained in this subsection  
15 shall not apply to a county correctional facility.

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

22 d. Isolated confinement shall be permitted under limited  
23 circumstances as follows:

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

35 (2) The facility administrator determines that an inmate should  
36 be placed in emergency confinement, provided that:

37 (a) an inmate shall not be held in emergency confinement for  
38 more than 24 hours; and

39 (b) an inmate held in emergency confinement shall receive an  
40 initial medical and mental health evaluation within two hours and a  
41 personal and comprehensive medical and mental health evaluation  
42 within 24 hours; however, in a county correctional facility, a  
43 preliminary examination shall be conducted by a member of the  
44 medical staff within 12 hours of confinement and the  
45 comprehensive medical and mental health evaluation within 48  
46 hours. Reports of these evaluations shall be immediately provided  
47 to the facility administrator.

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

1       The decision to place and retain an inmate in medical isolation  
2 due to a mental health emergency shall be made by a clinician based  
3 on a personal examination. In any case of isolation under this  
4 paragraph, a clinical review shall be conducted at least every six  
5 hours and as indicated. An inmate in medical isolation pursuant to  
6 this paragraph shall be placed in a mental health unit as designated  
7 by the commissioner. In the case of a county correctional facility, a  
8 decision to place an inmate in medical isolation shall be made by a  
9 member of the medical staff and be based on a personal  
10 examination; clinical reviews shall be conducted within 48 hours  
11 and then as clinically indicated.

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

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

21       (b) The inmate may be placed in involuntary protective custody  
22 only when there is clear and convincing evidence that confinement  
23 is necessary to prevent reasonably foreseeable harm and that a less  
24 restrictive intervention would not be sufficient to prevent the harm.

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

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

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

35       (f) The facility administrator shall place an inmate in a less  
36 restrictive intervention, including transfer to the general population  
37 of another institution or to a special-purpose housing unit for  
38 inmates who face similar threats, before placing the inmate in  
39 isolated confinement for protection unless the inmate poses an  
40 extraordinary security risk so great that transferring the inmate  
41 would be insufficient to ensure the inmate's safety.

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

45

46       5. a. An inmate shall not be placed in isolated confinement  
47 pending investigation of a disciplinary offense unless:

48       (1) the inmate's presence in the general population poses a  
49 danger to the inmate, staff, other inmates, or the public. In making

1 this determination, the facility administrator shall consider the  
2 seriousness of the alleged offense, including whether the offense  
3 involved violence or escape or posed a threat to institutional safety  
4 by encouraging others to engage in misconduct; or

5 (2) the facility administrator has granted approval in an  
6 emergency situation.

7 b. An inmate's placement in isolated confinement pending  
8 investigation of a disciplinary offense shall be reviewed within 24  
9 hours by a supervisory employee who was not involved in the initial  
10 placement decision.

11 c. An inmate who has been placed in isolated confinement  
12 pending investigation of a disciplinary offense shall be considered  
13 for release to the general population if the inmate demonstrates  
14 good behavior while confined. If the inmate is found guilty of the  
15 disciplinary offense, the inmate's good behavior shall be considered  
16 in determining the appropriate penalty.

17

18 6. Not less than 90 days before the effective date of this act, the  
19 commissioner shall:

20 a. develop policies and implement procedures for the review of  
21 inmates placed in isolated confinement and submit proposed  
22 regulations for promulgation as required by section 7 of this act;

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

26 c. develop a plan for providing step-down and transitional units,  
27 programs, and staffing patterns to accommodate inmates currently  
28 placed in isolated confinement, inmates who will be placed in isolated  
29 confinement, and inmates who receive an intermediate sanction in lieu  
30 of being placed in isolated confinement. Staffing patterns for  
31 correctional and program staff shall be set at levels necessary to ensure  
32 the safety of staff and inmates under the provisions of this act.

33

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

38 a. establishing less restrictive interventions to isolated  
39 confinement, including separation from other inmates; transfer to  
40 other correctional facilities; and any non-isolated confinement  
41 sanction authorized by Department of Corrections regulations;  
42 restrictions on religious, mail, and telephone privileges, visit  
43 contacts, or outdoor and recreation access shall only be imposed as  
44 is necessary for the safety of the inmate or others, but shall not  
45 restrict access to food, basic necessities, or legal access;

46 b. requiring training of disciplinary staff and all staff working  
47 with inmates in isolated confinement and requiring that this training  
48 include:



1 (1) assistance from appropriate professionals including, but not  
2 limited to, professionals in the Department of Human Services to  
3 periodically train all staff working with inmates in isolated  
4 confinement;

5 (2) standards for isolated confinement, including that it shall be  
6 limited to when an inmate commits an offense involving violence,  
7 escapes or attempts to escape, or poses a threat to institutional  
8 safety; that the maximum penalties for each offense shall be based  
9 on the seriousness of the offense; and available less restrictive  
10 interventions; and

11 (3) the identification of developmental disabilities, and the  
12 symptoms of mental illness, including trauma disorders, and  
13 methods of safe responses to people in distress;

14 c. requiring documentation of all decisions, procedures, and  
15 reviews of inmates placed in isolated confinement;

16 d. requiring monitoring of compliance with all rules governing  
17 cells, units, and other places where inmates are placed in isolated  
18 confinement;

19 e. requiring posting on the official website of the Department  
20 of Corrections of quarterly reports on the use of isolated  
21 confinement, by age, sex, gender identity, ethnicity, incidence of  
22 mental illness, and type of confinement status, at each facility,  
23 including a county correctional facility; these reports shall include  
24 the population on the last day of each quarter and a non-duplicative  
25 cumulative count of people exposed to isolated confinement for  
26 each fiscal year. These inmate reports also shall include the  
27 incidence of emergency confinement, self-harm, suicide, and assault  
28 in any isolated confinement unit, as well as explanations for each  
29 instance of facility-wide lockdown. These reports shall not include  
30 personally identifiable information regarding any inmate; and

31 f. modifying the New Jersey Administrative Code for  
32 consistency with the provisions of this act and to require  
33 appropriate alternative placements for vulnerable populations in  
34 county correctional facilities.

35  
36 8. This act shall take effect on the first day of the thirteenth  
37 month next following enactment, except the commissioner may take  
38 any anticipatory administrative action in advance as shall be  
39 necessary for the implementation of this act.

40  
41  
42 STATEMENT

43  
44 This bill restricts the use of isolated confinement in correctional  
45 facilities in New Jersey. The bill prohibits inmates incarcerated or  
46 detained in correctional facilities from being placed in isolated  
47 confinement unless there is reasonable cause to believe that the  
48 inmate or others would be at substantial risk of immediate, serious  
49 harm as evidenced by recent threats or conduct, and any less

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

8 The bill provides that the correctional facility is responsible for  
9 establishing the justification for isolated confinement by clear and  
10 convincing evidence, and that inmates may not be placed in isolated  
11 confinement for non-disciplinary reasons. Certain exceptions to the  
12 restrictions on isolated confinement for facility-wide lock downs,  
13 emergency confinement, medical isolation, and protective custody  
14 are provided by the bill.

15 The bill requires that inmates receive a personal and  
16 comprehensive medical and mental health examination, conducted  
17 by a clinician, before being placed in isolated confinement.  
18 However, in a county correctional facility, a preliminary  
19 examination is to be conducted by a member of the medical staff  
20 within 12 hours of confinement and the clinical examination is to be  
21 conducted within 48 hours of confinement.

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

31 The bill provides that the final decision to place an inmate in  
32 isolated confinement is to be made by the facility administrator,  
33 except in cases involving medical isolation, and that an inmate is to  
34 be removed from isolated confinement if the administrator  
35 determines that the inmate no longer meets the standard for isolated  
36 confinement.

37 The bill requires that a clinician evaluate each inmate placed in  
38 isolated confinement on a daily basis, in a confidential setting  
39 outside of the cell whenever possible, to determine whether the  
40 inmate is a member of a vulnerable population. However, in a  
41 county correctional facility, an inmate in isolated confinement is to  
42 be evaluated by a member of the medical staff as frequently as  
43 clinically indicated, but at least once a week. The bill provides that  
44 an inmate determined to be a member of a vulnerable population is  
45 to be immediately removed from isolated confinement to an  
46 appropriate placement. An inmate is a member of a vulnerable  
47 population, as defined in the bill, if he or she is 21 years of age or  
48 younger; is 65 years of age or older; has a disability based on a  
49 mental illness, a history of psychiatric hospitalization, or has

1 recently exhibited conduct, including but not limited to serious self-  
2 mutilation, indicating the need for further observation or evaluation  
3 to determine the presence of mental illness; has a developmental  
4 disability; has a serious medical condition which cannot effectively  
5 be treated in isolated confinement; is pregnant; is in the postpartum  
6 period, or has recently suffered a miscarriage or terminated a  
7 pregnancy; has a significant auditory or visual impairment; or is  
8 perceived to be lesbian, gay, bisexual, transgender, or intersex.

9 The bill further provides that no inmate is to be placed in isolated  
10 confinement for more than 15 consecutive days, or for more than 20  
11 days during any 60-day period, and that cells or other holding or  
12 living spaces used for isolated confinement are to be properly  
13 ventilated, lit, temperature-controlled, clean, and equipped with  
14 properly functioning sanitary fixtures.

15 The bill provides that staffing patterns for correctional and  
16 program staff are to be set at levels necessary to ensure the safety of  
17 staff and inmates under the provisions of the bill.