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**GOVERNOR'S PRESS RELEASE ON SIGNING:** Yes

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**HEARINGS:** No

**NEWSPAPER ARTICLES:** No

RWH/CL

(CORRECTED COPY)

P.L. 2019, CHAPTER 160, *approved July 11, 2019*  
Assembly, No. 314 (*First Reprint*)

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 <sup>1</sup>[recently]<sup>1</sup>  
30 reforms <sup>1</sup>in January 2016<sup>1</sup> to reduce its use in federal correctional  
31 facilities, including banning restrictive housing for low-level  
32 offenders and juveniles; decreasing the maximum length of time an  
33 inmate may be held in restricted housing from 365 days to 60 days;  
34 and increasing time spent outside the cell for inmates held in  
35 restrictive housing.

**EXPLANATION** – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Assembly AAP committee amendments adopted June 18, 2019.

1       3. For the purposes of this act:

2       “Clinician” means a State licensed physician, except if the  
3 clinician makes mental health evaluations, the term shall mean a  
4 State licensed psychiatrist or psychologist, or an advanced practice  
5 nurse or clinical nurse specialist with a specialty in psychiatric  
6 nursing.

7       “Commissioner” means the Commissioner of Corrections.

8       “Correctional facility” means any State correctional facility or  
9 county correctional facility, and any State, county, or private  
10 facility detaining persons pursuant to any intergovernmental service  
11 agreement or other contract with any State, county, or federal  
12 agency, including, but not limited to, United States Immigration and  
13 Customs Enforcement.

14       “County correctional facility” means a county jail, penitentiary,  
15 prison, or workhouse.

16       “Emergency confinement” means the <sup>1</sup>**[isolated confinement]**  
17 segregation<sup>1</sup> of an inmate in a correctional facility when there is  
18 reasonable cause to believe that this <sup>1</sup>**[confinement]** segregation<sup>1</sup> is  
19 necessary for reducing a substantial risk of imminent serious harm  
20 to the inmate or others, as evidenced by recent conduct.

21       “Facility administrator” or “administrator” means the chief  
22 operating officer or senior administrative designee of a correctional  
23 facility.

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

25       “Isolated confinement” means confinement of an inmate in a  
26 correctional facility, pursuant to disciplinary, administrative,  
27 protective, investigative, medical, or other classification, in a cell or  
28 similarly confined holding or living space, alone or with other  
29 inmates, for approximately 20 hours or more per day <sup>1</sup>in a State  
30 correctional facility or 22 hours or more per day in a county  
31 correctional facility<sup>1</sup>, with severely restricted activity, movement,  
32 and social interaction. <sup>1</sup>Isolated confinement shall not include  
33 confinement due to a facility-wide or unit-wide lockdown that is  
34 required to ensure the safety of inmates and staff.<sup>1</sup>

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

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

42       “Medical staff” means State licensed <sup>1</sup>**[psychiatrists]**  
43 physicians<sup>1</sup>, physician assistants, advanced practice nurses or  
44 clinical nurse specialists or, for mental health evaluations or  
45 decisions, those <sup>1</sup>registered<sup>1</sup> nurses with a specialty in psychiatric  
46 nursing, or comparably credentialed employees or contractors  
47 employed to provide healthcare.

- 1 “Member of a vulnerable population” means any inmate who:
- 2 a. is 21 years of age or younger;
- 3 b. is 65 years of age or older;
- 4 c. has a disability based on a mental illness, as defined in
- 5 subsection r. of section 2 of P.L.1987, c.116 (C.30:4-27.2), a history of
- 6 psychiatric hospitalization, or has recently exhibited conduct,
- 7 including but not limited to serious self-mutilation, indicating the
- 8 need for further observation or evaluation to determine the presence
- 9 of mental illness;
- 10 d. has a developmental disability, as defined in subsection b. of
- 11 section 3 of P.L.1985, c.145 (C.30:6D-25);
- 12 e. has a serious medical condition which cannot effectively be
- 13 treated in isolated confinement;
- 14 f. is pregnant, is in the postpartum period, or has recently
- 15 suffered a miscarriage or terminated a pregnancy;
- 16 g. has a significant auditory or visual impairment; or
- 17 h. is perceived to be lesbian, gay, bisexual, transgender, or
- 18 intersex.

19 <sup>1</sup>“Postpartum period” means the 45 days after childbirth.<sup>1</sup>

20 “Protective custody” means confinement of an inmate in a cell or

21 similarly confined holding or living space, under conditions

22 necessary to protect the inmate or others.

23 “State correctional facility” means a State prison or other penal

24 institution or an institution or facility designated by the

25 commissioner as a place of confinement under section 2 of

26 P.L.1969, c.22. (C.30:4-91.2).

27

28 4. a. The use of isolated confinement in correctional facilities

29 in this State shall be <sup>1</sup>**[restricted]** limited<sup>1</sup> as follows:

30 (1) Except as otherwise provided in paragraphs (1), (3), and (4)

31 of subsection d. of this section, an inmate shall not be placed in

32 isolated confinement unless there is reasonable cause to believe that

33 the inmate would create a substantial risk of <sup>1</sup>**[immediate]**<sup>1</sup> serious

34 harm to himself or another, <sup>1</sup>including but not limited to a

35 correctional police officer or other employee or volunteer in the

36 facility.<sup>1</sup> as evidenced by recent threats or conduct, and a less

37 restrictive intervention would be insufficient to reduce this risk.

38 Except as otherwise provided in paragraphs (1), (3), and (4) of

39 subsection d. of this section, the correctional facility shall bear the

40 burden of establishing this standard by clear and convincing

41 evidence.

42 (2) Except as otherwise provided in paragraphs (1), (3), and (4)

43 of subsection d. of this section, an inmate shall not be placed in

44 isolated confinement for non-disciplinary reasons.

45 (3) Except as otherwise provided in paragraph (1) of subsection

46 d. of this section, an inmate shall not be placed in isolated

47 confinement before receiving a personal and comprehensive

1 medical and mental health examination conducted by a clinician;  
2 however, in a county correctional facility, a preliminary  
3 examination shall be conducted by a member of the medical staff  
4 within 12 hours of confinement and the clinical examination shall  
5 be conducted within 48 hours of confinement <sup>1</sup>, but if staffing levels  
6 require, the period for conducting a clinical examination may be  
7 extended to 72 hours of confinement<sup>1</sup>.

8 (4) Except as otherwise provided in paragraph (1) of subsection  
9 d. of this section, an inmate shall only be held in isolated  
10 confinement pursuant to initial procedures and reviews which  
11 provide timely, fair and meaningful opportunities for the inmate to  
12 contest the confinement. These procedures shall include the right to  
13 an initial hearing within 72 hours of placement <sup>1</sup>absent exigent  
14 circumstances,<sup>1</sup> and a review every <sup>1</sup>~~15~~ 30<sup>1</sup> days thereafter, in the  
15 absence of exceptional circumstances, unavoidable delays, or  
16 reasonable postponements; the right to appear at the hearing; the  
17 right to be represented at the hearing; an independent hearing  
18 officer; and a written statement of reasons for the decision made at  
19 the hearing.

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

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

28 (7) A clinician shall <sup>1</sup>~~evaluate~~ conduct a mental health and  
29 physical health status examination for<sup>1</sup> each inmate placed in  
30 isolated confinement on a daily basis, in a confidential setting  
31 outside of the cell whenever possible, to determine whether the  
32 inmate is a member of a vulnerable population; however, in a  
33 county correctional facility, an inmate in isolated confinement shall  
34 be evaluated by a member of the medical staff as frequently as  
35 clinically indicated, but at least once <sup>1</sup>~~a~~ per<sup>1</sup> week. Except as  
36 otherwise provided in subsection d. of this section, an inmate  
37 determined to be a member of a vulnerable population shall be  
38 immediately removed from isolated confinement and moved to an  
39 appropriate placement.

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

44 (9) Except as otherwise provided in paragraph (1) of subsection  
45 d. of this section during a facility-wide lock down, an inmate shall  
46 not be placed in isolated confinement for more than <sup>1</sup>~~15~~ 20<sup>1</sup>

1 consecutive days, or for more than <sup>1</sup>~~20~~ 30<sup>1</sup> days during any 60-  
2 day period.

3 (10) Cells or other holding or living space used for isolated  
4 confinement are to be properly ventilated, lit, <sup>1</sup>~~temperature-~~  
5 ~~controlled~~ temperature-monitored<sup>1</sup>, clean, and equipped with  
6 properly functioning sanitary fixtures.

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

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

14 (13) An inmate held in isolated confinement shall not be denied  
15 access to appropriate medical care, including emergency medical  
16 care.

17 (14) An inmate <sup>1</sup>in a State correctional facility<sup>1</sup> shall not be  
18 directly released from isolated confinement to the community  
19 during the final 180 days of the inmate's term of incarceration,  
20 unless it is necessary for the safety of the inmate, staff, other  
21 inmates, or the public. <sup>1</sup>An inmate in a county correctional facility  
22 shall not be directly released from isolated confinement to the  
23 community during the final 30 days of the inmate's term of  
24 incarceration, unless it is necessary for the safety of the inmate,  
25 staff, other inmates, or the public.

26 (15) An inmate shall not be held in isolated confinement based  
27 on the inmate's race, creed, color, national origin, nationality,  
28 ancestry, age, marital status, domestic partnership or civil union  
29 status, affectional or sexual orientation, genetic information,  
30 pregnancy or breastfeeding status, sex, gender identity or  
31 expression, disability or atypical hereditary cellular or blood trait.<sup>1</sup>

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

35 <sup>1</sup>~~(1)~~ An inmate who is a member of a vulnerable population  
36 because the inmate is 21 years of age or younger, has a disability  
37 based on mental illness, or has a developmental disability:

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

41 (b) who would otherwise be placed in isolated confinement shall  
42 be screened by a correctional facility clinician or the appropriate  
43 screening service pursuant to the New Jersey Administrative Code  
44 and, if found to meet the standards of civil commitment, shall be  
45 placed in a specialized unit, as designated by the commissioner, or  
46 civilly committed to the least restrictive appropriate short term care

1 or psychiatric facility designated by the Department of Human  
2 Services.

3 (2) An inmate who is a member of a vulnerable population  
4 because the inmate is 65 years of age or older, has a serious medical  
5 condition which cannot be effectively treated in isolated  
6 confinement, or is pregnant, is in the postpartum period, or has  
7 recently suffered a miscarriage or terminated a pregnancy, who  
8 would otherwise be placed in isolated confinement, shall alternately  
9 be placed in an appropriate medical or other unit as designated by  
10 the commissioner. The requirements contained in this subsection  
11 shall not apply to a county correctional facility. <sup>1</sup>

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

18 d. Isolated confinement shall be permitted under limited  
19 circumstances as follows:

20 (1) The facility administrator <sup>1</sup>or designated shift commander<sup>1</sup>  
21 determines that a facility-wide lock down is required to ensure the  
22 safety of inmates in the facility until the administrator <sup>1</sup>or shift  
23 commander<sup>1</sup> determines that these circumstances no longer exist.  
24 The facility administrator <sup>1</sup>or shift commander<sup>1</sup> shall document  
25 specific reasons why any lockdown is necessary for more than 24  
26 hours, and why less restrictive interventions are insufficient to  
27 accomplish the facility's safety goals. Within <sup>1</sup>~~six hours~~ 15 days<sup>1</sup>  
28 commissioner shall publish the reasons on the Department of  
29 Corrections website and provide meaningful notice of the reasons  
30 for the lockdown to the Legislature.

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

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

35 (b) an inmate held in emergency confinement <sup>1</sup>in a State  
36 correctional facility<sup>1</sup> shall receive an initial medical and mental  
37 health evaluation <sup>1</sup>~~within two hours~~ immediately prior to  
38 placement in emergency confinement<sup>1</sup> and a personal and  
39 comprehensive medical and mental health evaluation within 24  
40 examination shall be conducted by a member of the medical staff  
41 within 12 hours of confinement and the comprehensive medical and  
42 mental health evaluation within <sup>1</sup>~~48~~ 72<sup>1</sup> hours. Reports of these  
43 evaluations shall be immediately provided to the facility  
44 administrator.

45 (3) A <sup>1</sup>~~physician~~ clinician<sup>1</sup>, based on a personal examination,  
46 determines that an inmate should be placed or retained in medical  
47 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 <sup>1</sup>~~【six】~~  
5 eight<sup>1</sup> hours and as <sup>1</sup>clinically<sup>1</sup> indicated. An inmate in medical  
6 isolation pursuant to this paragraph <sup>1</sup>~~【shall】~~ may<sup>1</sup> be placed in a  
7 mental health unit as designated by the commissioner. In the case  
8 of a county correctional facility, a decision to place an inmate in  
9 medical isolation shall be made by a member of the medical staff  
10 and be based on a personal examination; clinical reviews shall be  
11 conducted within <sup>1</sup>~~【48】~~ 72<sup>1</sup> hours 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) <sup>1</sup>The facility shall keep a written record of a request by an  
15 inmate to be placed in voluntary protective custody.<sup>1</sup> The inmate  
16 may be placed in voluntary protective custody only with informed,  
17 voluntary <sup>1</sup>~~【, written】~~<sup>1</sup> consent and when there is reasonable cause  
18 to believe that confinement is necessary to prevent reasonably  
19 foreseeable harm. When an inmate makes an informed voluntary  
20 <sup>1</sup>~~【written】~~<sup>1</sup> request for protective custody, the correctional facility  
21 shall bear the burden of establishing a basis for refusing the request.

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

26 (c) An inmate placed in protective custody shall receive  
27 <sup>1</sup>~~【comparable】~~ similar<sup>1</sup> opportunities for activities, movement, and  
28 social interaction, consistent with their safety and the safety of  
29 others, as are inmates in the general population of the facility.

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

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

36 (f) The facility administrator shall place an inmate in a less  
37 restrictive intervention, including transfer to the general population  
38 of another institution or to a special-purpose housing unit for  
39 inmates who face similar threats, before placing the inmate in  
40 isolated confinement for protection unless the inmate poses <sup>1</sup>~~【an~~  
41 extraordinary】 a<sup>1</sup> security risk so great that transferring the inmate  
42 would be insufficient to ensure the inmate's safety.

43 <sup>1</sup>~~【(5) A member of a vulnerable population shall not be placed~~  
44 in isolated confinement with one or more inmates, except with the  
45 inmate's informed, voluntary, written consent.】<sup>1</sup>

- 1       5. a. An inmate shall not be placed in isolated confinement  
2 pending investigation of a disciplinary offense unless:
- 3       (1) the inmate's presence in the general population poses a  
4 danger to the inmate, staff, other inmates, or the public. In making  
5 this determination, the facility administrator shall consider the  
6 seriousness of the alleged offense, including whether the offense  
7 involved violence or escape or posed a threat to institutional safety  
8 by encouraging others to engage in misconduct; or  
9       (2) the facility administrator has granted approval in an  
10 emergency situation.
- 11       b. An inmate's placement in isolated confinement pending  
12 investigation of a disciplinary offense shall be reviewed within 24  
13 hours by a supervisory employee who was not involved in the initial  
14 placement decision.
- 15       <sup>1</sup>[c. An inmate who has been placed in isolated confinement  
16 pending investigation of a disciplinary offense shall be considered  
17 for release to the general population if the inmate demonstrates  
18 good behavior while confined. If the inmate is found guilty of the  
19 disciplinary offense, the inmate's good behavior shall be considered  
20 in determining the appropriate penalty.]<sup>1</sup>
- 21
- 22       6. Not less than 90 days before the effective date of this act, the  
23 commissioner shall:
- 24       a. develop policies and implement procedures for the review  
25 of inmates placed in isolated confinement and submit proposed  
26 regulations for promulgation as required by section 7 of this act;
- 27       b. initiate a review of each inmate placed in isolated  
28 confinement pursuant to the policies and procedures developed and  
29 implemented under subsection a. of this section; and
- 30       c. develop a plan for providing step-down and transitional  
31 units, programs, and staffing patterns to accommodate inmates  
32 currently placed in isolated confinement, inmates who will be  
33 placed in isolated confinement, and inmates who receive an  
34 intermediate sanction in lieu of being placed in isolated  
35 confinement. Staffing patterns for correctional and program staff  
36 shall be set at levels necessary to ensure the safety of staff and  
37 inmates under the provisions of this act.
- 38
- 39       7. In accordance with the "Administrative Procedure Act,"  
40 P.L.1968, c.410 (C.52:14B-1 et seq.), the commissioner shall  
41 promulgate regulations to effectuate the provisions of this act. The  
42 regulations shall include but not be limited to:
- 43       a. establishing less restrictive interventions to isolated  
44 confinement, including separation from other inmates; transfer to  
45 other correctional facilities; and any non-isolated confinement  
46 sanction authorized by Department of Corrections regulations;  
47 restrictions on religious, mail, and telephone privileges, visit  
48 contacts, or outdoor and recreation access shall only be imposed as

- 1 is necessary for the safety of the inmate or others, but shall not  
2 restrict access to food, basic necessities, or legal access;
- 3 b. requiring training of disciplinary staff and all staff working  
4 with inmates in isolated confinement and requiring that this training  
5 include:
- 6 (1) assistance from appropriate professionals <sup>1</sup>[including, but  
7 not limited to, professionals in the Department of Human  
8 Services]<sup>1</sup> to periodically train all staff working with inmates in  
9 isolated confinement;
- 10 (2) standards for isolated confinement, including that it shall be  
11 limited to when an inmate commits an offense involving violence,  
12 escapes or attempts to escape, or poses a threat to institutional  
13 safety; that the maximum penalties for each offense shall be based  
14 on the seriousness of the offense; and available less restrictive  
15 interventions; and
- 16 (3) the identification of developmental disabilities, and the  
17 symptoms of mental illness, including trauma disorders, and  
18 methods of safe responses to people in distress;
- 19 c. requiring documentation of all decisions, procedures, and  
20 reviews of inmates placed in isolated confinement;
- 21 d. requiring monitoring of compliance with all rules governing  
22 cells, units, and other places where inmates are placed in isolated  
23 confinement;
- 24 e. requiring posting on the official website of the Department  
25 of Corrections of quarterly reports on the use of isolated  
26 confinement, <sup>1</sup>without revealing any personal identifying  
27 information.<sup>1</sup> by age, sex, gender identity, ethnicity, incidence of  
28 mental illness, and type of confinement status, at each facility,  
29 including a county correctional facility; these reports shall include  
30 the population on the last day of each quarter and a non-duplicative  
31 cumulative count of people exposed to isolated confinement for  
32 each fiscal year. These inmate reports also shall include the  
33 incidence of emergency confinement, self-harm, suicide, and assault  
34 in any isolated confinement unit <sup>1</sup>[, as well as explanations for each  
35 instance of facility-wide lockdown]<sup>1</sup>. These reports shall not  
36 include personally identifiable information regarding any inmate;  
37 and
- 38 f. modifying the New Jersey Administrative Code for  
39 consistency with the provisions of this act and to require  
40 appropriate alternative placements for vulnerable populations in  
41 county correctional facilities.
- 42
- 43 8. This act shall take effect on the first day of the thirteenth  
44 month next following enactment, except the commissioner may take  
45 any anticipatory administrative action in advance as shall be  
46 necessary for the implementation of this act.

**A314 [1R]**

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Restricts use of isolated confinement in correctional facilities.

**ASSEMBLY, No. 314**

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**STATE OF NEW JERSEY**

**218th LEGISLATURE**

---

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

**Sponsored by:**

**Assemblywoman NANCY J. PINKIN**

**District 18 (Middlesex)**

**Assemblywoman SHAVONDA E. SUMTER**

**District 35 (Bergen and Passaic)**

**Assemblywoman VALERIE VAINIERI HUTTLE**

**District 37 (Bergen)**

**Assemblyman REED GUSCIORA**

**District 15 (Hunterdon and Mercer)**

**Assemblywoman ELIZABETH MAHER MUOIO**

**District 15 (Hunterdon and Mercer)**

**Co-Sponsored by:**

**Assemblymen Zwicker, Holley, Giblin, Caputo, Chiaravalloti,  
Assemblywoman Jasey, Assemblymen Johnson, Coughlin,  
Assemblywomen McKnight, Lampitt, Jimenez, Assemblymen McKeon,  
Eustace, Assemblywoman Jones, Assemblymen Barclay, Spearman,  
Assemblywoman Reynolds-Jackson and Assemblyman Karabinchak**

**SYNOPSIS**

Restricts use of isolated confinement in correctional facilities.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.



**(Sponsorship Updated As Of: 5/21/2019)**

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5 **BE IT ENACTED** by the Senate and General Assembly of the State  
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29 facilities, President Obama recently adopted reforms to reduce its  
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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 in  
10 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

1 (b) who would otherwise be placed in isolated confinement shall  
2 be screened by a correctional facility clinician or the appropriate  
3 screening service pursuant to the New Jersey Administrative Code  
4 and, if found to meet the standards of civil commitment, shall be  
5 placed in a specialized unit, as designated by the commissioner, or  
6 civilly committed to the least restrictive appropriate short term care  
7 or psychiatric facility designated by the Department of Human  
8 Services.

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

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

24 d. Isolated confinement shall be permitted under limited  
25 circumstances as follows:

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

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

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

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

1 hours. Reports of these evaluations shall be immediately provided  
2 to the facility administrator.

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

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

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

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

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

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

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

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

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

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

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

3       (1) the inmate's presence in the general population poses a  
4 danger to the inmate, staff, other inmates, or the public. In making  
5 this determination, the facility administrator shall consider the  
6 seriousness of the alleged offense, including whether the offense  
7 involved violence or escape or posed a threat to institutional safety  
8 by encouraging others to engage in misconduct; or

9       (2) the facility administrator has granted approval in an  
10 emergency situation.

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

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

21

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

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

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

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

38

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

43       a. establishing less restrictive interventions to isolated  
44 confinement, including separation from other inmates; transfer to  
45 other correctional facilities; and any non-isolated confinement  
46 sanction authorized by Department of Corrections regulations;  
47 restrictions on religious, mail, and telephone privileges, visit  
48 contacts, or outdoor and recreation access shall only be imposed as

- 1 is necessary for the safety of the inmate or others, but shall not  
2 restrict access to food, basic necessities, or legal access;
- 3 b. requiring training of disciplinary staff and all staff working  
4 with inmates in isolated confinement and requiring that this training  
5 include:
- 6 (1) assistance from appropriate professionals including, but not  
7 limited to, professionals in the Department of Human Services to  
8 periodically train all staff working with inmates in isolated  
9 confinement;
- 10 (2) standards for isolated confinement, including that it shall be  
11 limited to when an inmate commits an offense involving violence,  
12 escapes or attempts to escape, or poses a threat to institutional  
13 safety; that the maximum penalties for each offense shall be based  
14 on the seriousness of the offense; and available less restrictive  
15 interventions; and
- 16 (3) the identification of developmental disabilities, and the  
17 symptoms of mental illness, including trauma disorders, and  
18 methods of safe responses to people in distress;
- 19 c. requiring documentation of all decisions, procedures, and  
20 reviews of inmates placed in isolated confinement;
- 21 d. requiring monitoring of compliance with all rules governing  
22 cells, units, and other places where inmates are placed in isolated  
23 confinement;
- 24 e. requiring posting on the official website of the Department  
25 of Corrections of quarterly reports on the use of isolated  
26 confinement, by age, sex, gender identity, ethnicity, incidence of  
27 mental illness, and type of confinement status, at each facility,  
28 including a county correctional facility; these reports shall include  
29 the population on the last day of each quarter and a non-duplicative  
30 cumulative count of people exposed to isolated confinement for  
31 each fiscal year. These inmate reports also shall include the  
32 incidence of emergency confinement, self-harm, suicide, and assault  
33 in any isolated confinement unit, as well as explanations for each  
34 instance of facility-wide lockdown. These reports shall not include  
35 personally identifiable information regarding any inmate; and
- 36 f. modifying the New Jersey Administrative Code for  
37 consistency with the provisions of this act and to require  
38 appropriate alternative placements for vulnerable populations in  
39 county correctional facilities.
- 40
- 41 8. This act shall take effect on the first day of the thirteenth  
42 month next following enactment, except the commissioner may take  
43 any anticipatory administrative action in advance as shall be  
44 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 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 substantial risk of immediate, serious harm as evidenced by recent threats or conduct, and any less restrictive intervention would be insufficient to reduce that risk. The bill defines isolated confinement as “confinement of an inmate in a correctional facility, pursuant to disciplinary, administrative, protective, investigative, medical, or other classification, in a cell or similarly confined holding or living space, alone or with other inmates, for approximately 20 hours or more per day with severely restricted activity, movement, and social interaction.”

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

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

The bill requires that initial procedures and reviews providing timely, fair, and meaningful opportunities for an inmate to contest the confinement are 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.

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

The bill requires that a clinician evaluate each inmate placed in isolated confinement on a daily basis, in a confidential setting outside of the cell whenever possible, to determine whether the inmate is a member of a vulnerable population. However, in a

1 county correctional facility, an inmate in isolated confinement is to  
2 be evaluated by a member of the medical staff as frequently as  
3 clinically indicated, but at least once a week. The bill provides that  
4 an inmate determined to be a member of a vulnerable population is  
5 to be immediately removed from isolated confinement to an  
6 appropriate placement. An inmate is a member of a vulnerable  
7 population, as defined in the bill, if he or she is 21 years of age or  
8 younger; is 65 years of age or older; has a disability based on a  
9 mental illness, a history of psychiatric hospitalization, or has  
10 recently exhibited conduct, including but not limited to serious self-  
11 mutilation, indicating the need for further observation or evaluation  
12 to determine the presence of mental illness; has a developmental  
13 disability; has a serious medical condition which cannot effectively  
14 be treated in isolated confinement; is pregnant; is in the postpartum  
15 period, or has recently suffered a miscarriage or terminated a  
16 pregnancy; has a significant auditory or visual impairment; or is  
17 perceived to be lesbian, gay, bisexual, transgender, or intersex.

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

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

# ASSEMBLY JUDICIARY COMMITTEE

## STATEMENT TO

### ASSEMBLY, No. 314

# STATE OF NEW JERSEY

DATED: MAY 20, 2019

The Assembly Judiciary Committee reports favorably Assembly Bill No. 314.

This bill restricts the use of isolated confinement in correctional facilities in New Jersey. The bill 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 substantial risk of immediate, serious harm as evidenced by recent threats or conduct, and any less restrictive intervention would be insufficient to reduce that risk. The bill defines isolated confinement as “confinement of an inmate in a correctional facility, pursuant to disciplinary, administrative, protective, investigative, medical, or other classification, in a cell or similarly confined holding or living space, alone or with other inmates, for approximately 20 hours or more per day with severely restricted activity, movement, and social interaction.”

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

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

The bill requires that initial procedures and reviews providing timely, fair, and meaningful opportunities for an inmate to contest the confinement are 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.



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

The bill requires that a clinician evaluate each inmate placed in isolated confinement on a daily basis, in a confidential setting outside of the cell whenever possible, to determine whether the inmate is a member of a vulnerable population. However, in a county correctional facility, an inmate in isolated confinement is to be evaluated by a member of the medical staff as frequently as clinically indicated, but at least once a week. The bill provides that an inmate determined to be a member of a vulnerable population is to be immediately removed from isolated confinement to an appropriate placement. An inmate is a member of a vulnerable population, as defined in the bill, if he or she is 21 years of age or younger; is 65 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; is in the postpartum period, or has recently suffered a miscarriage or terminated a pregnancy; has a significant auditory or visual impairment; or is perceived to be lesbian, gay, bisexual, transgender, or intersex.

The bill further provides that 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, and that cells or other holding or living spaces used for isolated confinement are to be properly ventilated, lit, temperature-controlled, clean, and equipped with properly functioning sanitary fixtures.

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

This bill was pre-filed for introduction in the 2018-2019 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

# ASSEMBLY APPROPRIATIONS COMMITTEE

## STATEMENT TO

### **ASSEMBLY, No. 314**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: JUNE 18, 2019

The Assembly Appropriations Committee reports favorably Assembly Bill No. 314, with committee amendments.

As amended and reported by the committee, Assembly Bill No. 314 limits the use of isolated confinement in correctional facilities in this State.

The amended bill generally prohibits inmates from being placed in isolated confinement unless the correctional facility establishes by clear and convincing evidence that there is reasonable cause to believe that the inmate or others would be at substantial risk of immediate, serious harm as evidenced by recent threats or conduct, and any less restrictive intervention would be insufficient to reduce that risk. The amended bill defines isolated confinement as “confinement of an inmate in a correctional facility, pursuant to disciplinary, administrative, protective, investigative, medical, or other classification, in a cell or similarly confined holding or living space, alone or with other inmates, for approximately 20 hours or more per day in a State correctional facility or 22 hours or more per day in a county correctional facility, with severely restricted activity, movement, and social interaction.” Under the bill as amended, isolated confinement does not include facility-wide or unit-wide lockdowns required to ensure the safety of inmates and staff.

Under the amended bill, inmates may not be placed in isolated confinement for non-disciplinary reasons, with the exception of facility-wide lock downs, medical isolation, and protective custody. Inmates generally also are not to be placed in isolated confinement pending investigation of disciplinary offenses.

The amended bill requires qualified healthcare personnel to conduct a personal and comprehensive medical and mental health examination before a State inmate may be placed in isolated confinement. County inmates are to receive a preliminary examination by medical staff within 12 hours of confinement and a clinical examination within 48 hours of confinement, but if staffing levels require, the 48 hours to conduct a clinical examination may be extended to 72 hours. Inmates are to be provided an opportunity to contest the confinement and have the right to an initial hearing within 72 hours of placement, absent exigent circumstances, with subsequent

reviews every 30 days. The amended bill accords the inmates the right to appear at the hearing presided over by an independent hearing officer, have representation, and receive a written statement explaining the reasons for the decision made at the hearing. The facility administrator is responsible for making the final decision to place an inmate in isolated confinement and to remove an inmate who no longer meets the standards for confinement.

The bill requires that qualified healthcare personnel daily conduct a mental health and physical health status examination of State inmates to determine whether the inmate is a member of a vulnerable population; county inmates are to be evaluated by a member of the medical staff at least once per week. Inmates determined to be a member of a vulnerable population are to be immediately moved to an appropriate placement. An inmate is a member of a vulnerable population, as defined in the bill, if he or she is 21 years of age or younger; is 65 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; is in the postpartum period, or has recently suffered a miscarriage or terminated a pregnancy; has a significant auditory or visual impairment; or is perceived to be lesbian, gay, bisexual, transgender, or intersex. The amended bill defines “postpartum period” as 45 days after childbirth.

Inmates placed in isolated confinement are not to be held there for more than 20 consecutive days, or for more than 30 days during any 60-day period. Cells or other spaces in which inmates are confined are to be properly ventilated, lit, temperature-monitored, clean, and equipped with functioning sanitary fixtures.

The commissioner is to develop policies and procedures governing isolated confinement and ensure adequate correctional and program staff to ensure the safety of staff and inmates.

#### COMMITTEE AMENDMENTS:

The committee amended the bill to:

- 1) change the definition of isolated confinement to change the number of hours for county correctional facilities from 20 to 22; in the bill as introduced, 20 hours or more applied to both State and county correctional facilities;
- 2) clarify that isolated confinement does not include facility-wide or unit-wide lockdowns that are required to ensure the safety of inmates and staff;
- 3) defines “postpartum period” as 45 days after childbirth;

4) if staffing levels require, increase from 48 to 72 hours for county correctional facilities to conduct a clinical examination of a person placed in isolated confinement;

5) clarify that inmates are to be provided an opportunity to contest isolated confinement within 72, *absent exigent circumstances*, and subsequent reviews are required every 30 days rather than every 15 days as required in the introduced bill;

6) limit isolated confinement to 20 consecutive days and 30 days during any 60-day period; as introduced, the limit was 15 consecutive days and not more than 20 days during any 60 day period;

7) specify that county inmates are not to be directly released from isolated confinement to the community during the final 30 days of their sentence; as introduced, the 180 day period applicable to State inmates also applied to county inmates;

8) clarify that inmates are not to be held in isolated confinement based on their race, creed, color, national origin, nationality, ancestry, age, marital status, domestic partnership or civil union status, affectional or sexual orientation, genetic information, pregnancy or breastfeeding status, sex, gender identity or expression, disability or atypical hereditary cellular or blood trait;

9) remove the provision that certain members of a vulnerable population are not to be disciplined for refusing treatment or medication and others should be placed in alternative medical or other units;

10) increase from six hours to 15 days within which a facility is required to report the reasons for extending a facility lock-down;

11) inmates placed in emergency confinement in a State correctional facility are to receive an initial medical and mental health evaluation immediately prior to placement followed by comprehensive evaluations within 24 hours; as introduced, the initial evaluations were to be made within two hours; county facilities have 48 hours, rather than 72 hours, to conduct comprehensive evaluations;

12) remove the requirement that members of a vulnerable population give their informed, voluntary written consent to be placed in isolated confinement with other inmates;

13) remove a provision allowing an inmate in isolated confinement pending a disciplinary investigation to be released for good behavior and if convicted, consider good behavior in determining a penalty.

14) clarify that each inmate placed in isolated confinement is to receive a mental and physical health status exam on a daily basis in a State correctional facility and at least once per week in a county correctional facility;

15) require the facility to keep a written record of an inmate's request to be placed in voluntary protective custody;

16) remove the requirement that Department of Corrections post explanations for each facility-wide lockdown to its website; and

17) other clarifying and technical amendments.

**FISCAL IMPACT:**

The Office of Legislative Services (OLS) estimates that this bill may result in State and local expenditure increases by an indeterminate amount. It is unknown to the OLS how many inmates would be placed in isolated confinement under the provisions of this bill, and if additional clinicians or members of the medical staff for the State correctional facilities and the county correctional facilities would be needed to conduct the examinations as described in the bill. In addition, it is unknown how other staffing patterns for the State correctional facilities and the county correctional facilities would be affected by this bill.

# LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

## ASSEMBLY, No. 314

### STATE OF NEW JERSEY 218th LEGISLATURE

DATED: JUNE 25, 2019

#### SUMMARY

- Synopsis:** Restricts use of isolated confinement in correctional facilities.
- Type of Impact:** Annual expenditure increase to State General Fund. Annual expenditure increase to county governments.
- Agencies Affected:** Department of Corrections; county jails.

#### Office of Legislative Services Estimate

<b>Fiscal Impact</b>	<b><u>Annual</u></b>
<b>State Expenditure Increase</b>	Indeterminate
<b>Local Expenditure Increase</b>	Indeterminate

- The Office of Legislative Services (OLS) estimates that this bill may result in State and local expenditure increases by an indeterminate amount.
- It is unknown to the OLS how many inmates would be placed in isolated confinement under the provisions of this bill, and if additional clinicians or members of the medical staff for the State correctional facilities and the county correctional facilities would be needed to conduct the examinations as described in the bill.
- In addition, it is unknown how other staffing patterns for the State correctional facilities and the county correctional facilities would be affected by this bill.

#### BILL DESCRIPTION

This bill limits the use of isolated confinement in correctional facilities in this State.

The bill generally prohibits inmates from being placed in isolated confinement unless the correctional facility establishes by clear and convincing evidence that there is reasonable cause to believe that the inmate or others would be at substantial risk of immediate, serious harm as evidenced by recent threats or conduct, and any less restrictive intervention would be insufficient

to reduce that risk. The bill defines isolated confinement as “confinement of an inmate in a correctional facility, pursuant to disciplinary, administrative, protective, investigative, medical, or other classification, in a cell or similarly confined holding or living space, alone or with other inmates, for approximately 20 hours or more per day in a State correctional facility or 22 hours or more per day in a county correctional facility, with severely restricted activity, movement, and social interaction.” Under the bill, isolated confinement does not include facility-wide or unit-wide lockdowns required to ensure the safety of inmates and staff.

Under the bill, inmates may not be placed in isolated confinement for non-disciplinary reasons, with the exception of facility-wide lock downs, medical isolation, and protective custody. Inmates generally also are not to be placed in isolated confinement pending investigation of disciplinary offenses.

The bill requires qualified healthcare personnel to conduct a personal and comprehensive medical and mental health examination before a State inmate may be placed in isolated confinement. County inmates are to receive a preliminary examination by medical staff within 12 hours of confinement and a clinical examination within 48 hours of confinement, but if staffing levels require, the 48 hours to conduct a clinical examination may be extended to 72 hours. Inmates are to be provided an opportunity to contest the confinement and have the right to an initial hearing within 72 hours of placement, absent exigent circumstances, with subsequent reviews every 30 days. The bill accords the inmates the right to appear at the hearing presided over by an independent hearing officer, have representation, and receive a written statement explaining the reasons for the decision made at the hearing. The facility administrator is responsible for making the final decision to place an inmate in isolated confinement and to remove an inmate who no longer meets the standards for confinement.

The bill requires that qualified healthcare personnel daily conduct a mental health and physical health status examination of State inmates to determine whether the inmate is a member of a vulnerable population; county inmates are to be evaluated by a member of the medical staff at least once per week. Inmates determined to be a member of a vulnerable population are to be immediately moved to an appropriate placement. An inmate is a member of a vulnerable population, as defined in the bill, if he or she is 21 years of age or younger; is 65 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; is in the postpartum period, or has recently suffered a miscarriage or terminated a pregnancy; has a significant auditory or visual impairment; or is perceived to be lesbian, gay, bisexual, transgender, or intersex. The bill defines “postpartum period” as 45 days after childbirth.

Inmates placed in isolated confinement are not to be held there for more than 20 consecutive days, or for more than 30 days during any 60-day period. Cells or other spaces in which inmates are confined are to be properly ventilated, lit, temperature-monitored, clean, and equipped with functioning sanitary fixtures.

The commissioner is to develop policies and procedures governing isolated confinement and ensure adequate correctional and program staff to ensure the safety of staff and inmates.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

None received.

***OFFICE OF LEGISLATIVE SERVICES***

The OLS estimates that this bill may result in State and local expenditure increases by an indeterminate amount. It is unknown to the OLS how many inmates would be placed in isolated confinement under the provisions of this bill, and if additional clinicians or members of the medical staff for the State correctional facilities and the county correctional facilities would be needed to conduct the examinations as described in the bill.

In addition, it is unknown how other staffing patterns for the State correctional facilities and the county correctional facilities would be affected by this bill.

*Section:           Judiciary*

*Analyst:          Sarita Welsh*  
*Associate Counsel*

*Approved:       Frank W. Haines III*  
*Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).



# 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.

# SENATE LAW AND PUBLIC SAFETY COMMITTEE

## STATEMENT TO

### **SENATE, No. 3261**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: JUNE 6, 2019

The Senate Law and Public Safety Committee reports favorably and with committee amendments Senate Bill No. 3261.

As amended and reported by the committee, this bill restricts the use of isolated confinement in correctional facilities in this State.

The bill generally prohibits inmates from being placed in isolated confinement unless the correctional facility establishes by clear and convincing evidence that there is reasonable cause to believe that the inmate or others would be at substantial risk of immediate, serious harm as evidenced by recent threats or conduct, and any less restrictive intervention would be insufficient to reduce that risk. The bill defines isolated confinement as “confinement of an inmate in a correctional facility, pursuant to disciplinary, administrative, protective, investigative, medical, or other classification, in a cell or similarly confined holding or living space, alone or with other inmates, for approximately 20 hours or more per day with severely restricted activity, movement, and social interaction.”

Under the bill, inmates may not be placed in isolated confinement for non-disciplinary reasons, with the exception of facility-wide lock downs, medical isolation, and protective custody. Inmates generally also are not to be placed in isolated confinement pending investigation of disciplinary offenses.

The bill requires a licensed clinician to conduct a personal and comprehensive medical and mental health examination before a State inmate may be placed in isolated confinement. County inmates are to receive a preliminary examination by medical staff within 12 hours of confinement and a clinical examination within 48 hours of confinement. Inmates are to be provided an opportunity to contest the confinement and have the right to an initial hearing within 72 hours of placement with subsequent reviews every 15 days. The bill accords the inmates the right to appear at the hearing by an independent hearing officer, have representation, and receive a written statement explaining the reasons for the decision made at the hearing. The facility administrator is responsible for making the final decision to place an inmate in isolated confinement and to remove an inmate who no longer meets the standards for confinement.

The bill requires that a clinician daily evaluate State inmates to determine whether the inmate is a member of a vulnerable population; county inmates are to be evaluated by a member of the medical staff at least once per week. Inmates determined to be a member of a vulnerable population are to be immediately moved to an appropriate placement. An inmate is a member of a vulnerable population, as defined in the bill, if he or she is 21 years of age or younger; is 65 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; is in the postpartum period, or has recently suffered a miscarriage or terminated a pregnancy; has a significant auditory or visual impairment; or is perceived to be lesbian, gay, bisexual, transgender, or intersex.

Inmates placed in isolated confinement are not to be held there for more than 15 consecutive days, or for more than 20 days during any 60-day period. Cells or other spaces in which inmates are confined are to be properly ventilated, lit, temperature-controlled, and clean, and be equipped with functioning sanitary fixtures.

The commissioner is to develop policies and procedures governing isolated confinement and ensure adequate correctional and program staff to ensure the safety of staff and inmates.

COMMITTEE AMENDMENTS:

The committee updated a provision of the findings and declarations section of the bill and made a technical amendment.

# SENATE BUDGET AND APPROPRIATIONS COMMITTEE

## STATEMENT TO

[First Reprint]

## **SENATE, No. 3261**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: JUNE 17, 2019

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 3261 (1R), with committee amendments.

As amended and reported by the committee, Senate Bill No. 3261 (1R) limits the use of isolated confinement in correctional facilities in this State.

The amended bill generally prohibits inmates from being placed in isolated confinement unless the correctional facility establishes by clear and convincing evidence that there is reasonable cause to believe that the inmate or others would be at substantial risk of immediate, serious harm as evidenced by recent threats or conduct, and any less restrictive intervention would be insufficient to reduce that risk. The amended bill defines isolated confinement as “confinement of an inmate in a correctional facility, pursuant to disciplinary, administrative, protective, investigative, medical, or other classification, in a cell or similarly confined holding or living space, alone or with other inmates, for approximately 20 hours or more per day in a State correctional facility or 22 hours or more per day in a county correctional facility, with severely restricted activity, movement, and social interaction.” Under the bill as amended, isolated confinement does not include facility-wide or unit-wide lockdowns required to ensure the safety of inmates and staff.

Under the amended bill, inmates may not be placed in isolated confinement for non-disciplinary reasons, with the exception of facility-wide lock downs, medical isolation, and protective custody. Inmates generally also are not to be placed in isolated confinement pending investigation of disciplinary offenses.

The amended bill requires qualified healthcare personnel to conduct a personal and comprehensive medical and mental health examination before a State inmate may be placed in isolated confinement. County inmates are to receive a preliminary examination by medical staff within 12 hours of confinement and a clinical examination within 48 hours of confinement, but if staffing levels require, the 48 hours to conduct a clinical examination may

be extended to 72 hours. Inmates are to be provided an opportunity to contest the confinement and have the right to an initial hearing within 72 hours of placement, absent exigent circumstances, with subsequent reviews every 30 days. The amended bill accords the inmates the right to appear at the hearing presided over by an independent hearing officer, have representation, and receive a written statement explaining the reasons for the decision made at the hearing. The facility administrator is responsible for making the final decision to place an inmate in isolated confinement and to remove an inmate who no longer meets the standards for confinement.

The bill requires that qualified healthcare personnel daily conduct a mental health and physical health status examination of State inmates to determine whether the inmate is a member of a vulnerable population; county inmates are to be evaluated by a member of the medical staff at least once per week. Inmates determined to be a member of a vulnerable population are to be immediately moved to an appropriate placement. An inmate is a member of a vulnerable population, as defined in the bill, if he or she is 21 years of age or younger; is 65 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; is in the postpartum period, or has recently suffered a miscarriage or terminated a pregnancy; has a significant auditory or visual impairment; or is perceived to be lesbian, gay, bisexual, transgender, or intersex. The amended bill defines "postpartum period" as 45 days after childbirth.

Inmates placed in isolated confinement are not to be held there for more than 20 consecutive days, or for more than 30 days during any 60-day period. Cells or other spaces in which inmates are confined are to be properly ventilated, lit, temperature-monitored, clean, and equipped with functioning sanitary fixtures.

The commissioner is to develop policies and procedures governing isolated confinement and ensure adequate correctional and program staff to ensure the safety of staff and inmates.

#### COMMITTEE AMENDMENTS:

The committee amended the bill to:

- 1) change the definition of isolated confinement to change the number of hours for county correctional facilities from 20 to 22; in the bill as introduced, 20 hours or more applied to both State and county correctional facilities;

2) clarify that isolated confinement does not include facility-wide or unit-wide lockdowns that are required to ensure the safety of inmates and staff;

3) defines “postpartum period” as 45 days after childbirth;

4) if staffing levels require, increase from 48 to 72 hours for county correctional facilities to conduct a clinical examination of a person placed in isolated confinement;

5) clarify that inmates are to be provided an opportunity to contest isolated confinement within 72, *absent exigent circumstances*, and subsequent reviews are required every 30 days rather than every 15 days as required in the introduced bill;

6) limit isolated confinement to 20 consecutive days and 30 days during any 60-day period; as introduced, the limit was 15 consecutive days and not more than 20 days during any 60 day period;

7) specify that county inmates are not to be directly released from isolated confinement to the community during the final 30 days of their sentence; as introduced, the 180 day period applicable to State inmates also applied to county inmates;

8) clarify that inmates are not to be held in isolated confinement based on their race, creed, color, national origin, nationality, ancestry, age, marital status, domestic partnership or civil union status, affectional or sexual orientation, genetic information, pregnancy or breastfeeding status, sex, gender identity or expression, disability or atypical hereditary cellular or blood trait;

9) remove the provision that certain members of a vulnerable population are not to be disciplined for refusing treatment or medication and others should be placed in alternative medical or other units;

10) increase from six hours to 15 days within which a facility is required to report the reasons for extending a facility lock-down;

11) inmates placed in emergency confinement in a State correctional facility are to receive an initial medical and mental health evaluation immediately prior to placement followed by comprehensive evaluations within 24 hours; as introduced, the initial evaluations were to be made within two hours; county facilities have 48 hours, rather than 72 hours, to conduct comprehensive evaluations;

12) remove the requirement that members of a vulnerable population give their informed, voluntary written consent to be placed in isolated confinement with other inmates;

13) remove a provision allowing an inmate in isolated confinement pending a disciplinary investigation to be released for good behavior and if convicted, consider good behavior in determining a penalty.

14) clarify that each inmate placed in isolated confinement is to receive a mental and physical health status exam on a daily basis in a State correctional facility and at least once per week in a county correctional facility;



15) require the facility to keep a written record of an inmate's request to be placed in voluntary protective custody;

16) remove the requirement that Department of Corrections post explanations for each facility-wide lockdown to its website; and

17) other clarifying and technical amendments.

FISCAL IMPACT:

The Office of Legislative Services (OLS) estimates that this bill may result in State and local expenditure increases by an indeterminate amount. It is unknown to the OLS how many inmates would be placed in isolated confinement under the provisions of this bill, and if additional clinicians or members of the medical staff for the State correctional facilities and the county correctional facilities would be needed to conduct the examinations as described in the bill. In addition, it is unknown how other staffing patterns for the State correctional facilities and the county correctional facilities would be affected by this bill.

# LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

**SENATE, No. 3261**

## **STATE OF NEW JERSEY 218th LEGISLATURE**

DATED: JUNE 26, 2019

### SUMMARY

**Synopsis:** Restricts use of isolated confinement in correctional facilities.

**Type of Impact:** Annual expenditure increase to State General Fund. Annual expenditure increase to county governments.

**Agencies Affected:** Department of Corrections; county jails.

#### Office of Legislative Services Estimate

<b>Fiscal Impact</b>	<b><u>Annual</u></b>
<b>State Expenditure Increase</b>	Indeterminate
<b>Local Expenditure Increase</b>	Indeterminate

- The Office of Legislative Services (OLS) estimates that this bill may result in State and local expenditure increases by an indeterminate amount.
- It is unknown to the OLS how many inmates would be placed in isolated confinement under the provisions of this bill, and if additional clinicians or members of the medical staff for the State correctional facilities and the county correctional facilities would be needed to conduct the examinations as described in the bill.
- In addition, it is unknown how other staffing patterns for the State correctional facilities and the county correctional facilities would be affected by this bill.

### BILL DESCRIPTION

The bill generally prohibits inmates from being placed in isolated confinement unless the correctional facility establishes by clear and convincing evidence that there is reasonable cause to believe that the inmate or others would be at substantial risk of immediate, serious harm as evidenced by recent threats or conduct, and any less restrictive intervention would be insufficient to reduce that risk. The bill defines isolated confinement as “confinement of an inmate in a correctional facility, pursuant to disciplinary, administrative, protective,

investigative, medical, or other classification, in a cell or similarly confined holding or living space, alone or with other inmates, for approximately 20 hours or more per day in a State correctional facility or 22 hours or more per day in a county correctional facility, with severely restricted activity, movement, and social interaction.” Under the bill, isolated confinement does not include facility-wide or unit-wide lockdowns required to ensure the safety of inmates and staff.

Under the bill, inmates may not be placed in isolated confinement for non-disciplinary reasons, with the exception of facility-wide lock downs, medical isolation, and protective custody. Inmates generally also are not to be placed in isolated confinement pending investigation of disciplinary offenses.

The bill requires qualified healthcare personnel to conduct a personal and comprehensive medical and mental health examination before a State inmate may be placed in isolated confinement. County inmates are to receive a preliminary examination by medical staff within 12 hours of confinement and a clinical examination within 48 hours of confinement, but if staffing levels require, the 48 hours to conduct a clinical examination may be extended to 72 hours. Inmates are to be provided an opportunity to contest the confinement and have the right to an initial hearing within 72 hours of placement, absent exigent circumstances, with subsequent reviews every 30 days. The bill accords the inmates the right to appear at the hearing presided over by an independent hearing officer, have representation, and receive a written statement explaining the reasons for the decision made at the hearing. The facility administrator is responsible for making the final decision to place an inmate in isolated confinement and to remove an inmate who no longer meets the standards for confinement.

The bill requires that qualified healthcare personnel daily conduct a mental health and physical health status examination of State inmates to determine whether the inmate is a member of a vulnerable population; county inmates are to be evaluated by a member of the medical staff at least once per week. Inmates determined to be a member of a vulnerable population are to be immediately moved to an appropriate placement. An inmate is a member of a vulnerable population, as defined in the bill, if he or she is 21 years of age or younger; is 65 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; is in the postpartum period, or has recently suffered a miscarriage or terminated a pregnancy; has a significant auditory or visual impairment; or is perceived to be lesbian, gay, bisexual, transgender, or intersex. The bill defines “postpartum period” as 45 days after childbirth.

Inmates placed in isolated confinement are not to be held there for more than 20 consecutive days, or for more than 30 days during any 60-day period. Cells or other spaces in which inmates are confined are to be properly ventilated, lit, temperature-monitored, clean, and equipped with functioning sanitary fixtures.

The commissioner is to develop policies and procedures governing isolated confinement and ensure adequate correctional and program staff to ensure the safety of staff and inmates.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

None received.

***OFFICE OF LEGISLATIVE SERVICES***

The OLS estimates that this bill may result in State and local expenditure increases by an indeterminate amount. It is unknown to the OLS how many inmates would be placed in isolated confinement under the provisions of this bill, and if additional clinicians or members of the medical staff for the State correctional facilities and the county correctional facilities would be needed to conduct the examinations as described in the bill.

In addition, it is unknown how other staffing patterns for the State correctional facilities and the county correctional facilities would be affected by this bill.

*Section:           Judiciary*

*Analyst:          Sarita Welsh*  
*Associate Counsel*

*Approved:       Frank W. Haines III*  
*Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

# Governor Murphy Signs Legislation to Restrict the Use of Isolated Confinement in New Jersey's Correctional Facilities

07/11/2019

**TRENTON** – Governor Phil Murphy today signed A314 into law, which restricts the use of isolated confinement in New Jersey's correctional facilities. The legislation codifies into law certain existing New Jersey Department of Corrections policies, places limits on the use of long-term isolated confinement, and restricts the use of isolated confinement on vulnerable populations.

"By signing this historic legislation, we are furthering our commitment to the continued transformation of our criminal justice system and ensuring it reflects New Jersey's core values of safety, dignity, and fairness," said Governor Murphy. "I am proud to stand together with New Jersey's criminal justice reform advocates and legislators to advance a humane correctional system that allows for the safe operation of facilities and focuses on strengthening reentry initiatives, substance use disorder treatment, and recovery programs."

"This bill will codify certain existing New Jersey Department of Corrections policies into law and prevent isolated confinement from wrongful overuse in the state of New Jersey by future Administrations," said New Jersey Department of Corrections Acting Commissioner Marcus O. Hicks. "The Department of Corrections strives to rehabilitate the offender population and prepare them for success. Limiting the overuse of isolated confinement will further assist the Department in achieving this goal."

The bill 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 substantial risk of serious harm as evidenced by recent threats or conduct, and that any less restrictive intervention would be insufficient to reduce that risk, subject to certain limited exceptions. Furthermore, members of vulnerable populations, including individuals under 21 and over 65, individuals with disabilities, pregnant women, and LGBTQ individuals, are prohibited from being placed in isolated confinement except in rare, specified circumstances.

The bill further provides that no inmate is to be placed in isolated confinement for more than 20 consecutive days, or for more than 30 days during any 60-day period.

Primary sponsors of the legislation include Senators Nellie Pou and Sandra Cunningham, and Assemblymembers Nancy Pinkin, Shavonda E. Sumter, and Valerie Vainieri Huttle.

"The excess use of isolated confinement has led to severe consequences for the physical and mental health of incarcerated men and women," said Senator Pou. "When this country was founded, we vowed that Americans would be free from the fear of cruel and unusual punishment. Unregulated isolated confinement does not meet that standard and I am proud that today, in New Jersey, we will be treating incarcerated people with the dignity they deserve."

"Our state holds over 5 percent of its detainees in solitary confinement, despite extensive evidence that it causes lasting mental health damage," said Senator Cunningham. "Using it with the regularity that we do is not only unnecessary but unjust. Unless a person is of clear and present danger to those around them, they should not be placed in isolated confinement. This legislation is long overdue and I am grateful to see it signed into law."

"There is significant proof that solitary confinement can have a severe, long-term negative impact on an inmate's mental health," said Assemblywoman Pinkin. "The overuse of isolation in New Jersey's correctional facilities can cause irreparable psychological damage that affects people while they are in prison and detracts from former inmates' ability to make positive contributions to their communities thereafter."

"In addition to this being a moral issue, it's also a serious health care concern. Solitary confinement very often is associated with anxiety, depression, self-harm, and suicide," said Assemblywoman Sumter, Director of Behavioral Health Services at Hackensack UMC Mountainside Hospital. "This is a method that should be employed as a last resort, only in extreme cases, and with extreme care. A convict may have committed a crime, but he or she is still a human being and deserves to be treated as such."

"For children, the elderly, pregnant women, and those with mental illnesses or developmental disabilities, the effects of solitary confinement – which can have a damaging effect on anyone – are downright devastating," said Assemblywoman Vainieri Huttle, Chair of the Assembly Human Services Committee. "As New Jersey works to reform its criminal justice system by prohibiting the arbitrary overuse of solitary confinement, it's important that we emphasize protecting members of these vulnerable populations."

"I am extremely encouraged by Governor Murphy's historic move to restrict the use of isolated confinement in New Jersey's prisons," said Rev. Charles Boyer, Pastor of Bethel AME Church in Woodbury and the founder of Salvation and Social Justice. "This is one of the most compassionate, progressive, and morally just solitary laws in the nation."

"The voices of survivors of solitary confinement, and their strength in summoning up some of the worst moments of their lives to stop the routine use of prolonged isolation, have been the moral ballast responsible for making these historic restrictions law," said J. Amos Caley, Lead Organizer of the New Jersey Campaign for Alternatives to Isolated Confinement and Associate Pastor of the Reformed Church of Highland Park. "The power of this movement – led by survivors who have refused to stand by while others experience the agony of prolonged isolation – can serve as a guide for others around the nation to act on the imperative of ending long-term solitary confinement."

"The agony of solitary confinement is that it doesn't just lock up your body – it locks in your mind," said Nafeesah Goldsmith, a community organizer and a survivor of solitary confinement. "For New Jersey to institute dramatic restrictions on solitary acknowledges the suffering we've endured, along with the scars we'll bear for the rest of our lives. I've said before that solitary confinement is pure evil, incapable of resulting in anything but dehumanization and degradation – but as of today, I can point to one very small exception: all that I went through strengthened my voice to bring us closer to the goal of ending this diabolical practice once and for all."

"I am glad to see that the Governor has signed this important piece of legislation," said Lawrence Hamm, Chairman of the People's Organization for Progress. "It is a necessary step in the overall effort to reform the criminal justice system. The United Nations has recognized solitary confinement as a violation of human rights. This bill, which would restrict the use of solitary confinement, is a step in the right direction. I thank the Governor for signing this bill."

"The signing of this legislation brings the U.S. closer to international standards. To deprive people of natural light, exercise, and meaningful human contact unnecessarily and for prolonged periods of time is inhumane," said Justin Mazzola, Researcher at Amnesty International USA. "Solitary confinement should only be used in exceptional circumstances and for as short a period as possible – we need more policies that reflect that."

"Prolonged isolation is cruel, undermines human dignity, and has profound, lifelong consequences," said Laura Pitter, Deputy Director, U.S. Program, Human Rights Watch. "By passing this law, New Jersey has acknowledged this fact, severely limited this horrendous practice, and furthered an important human rights standard."

"This is another historic and enormous step forward, again, towards criminal justice reform for New Jersey," said Cuqui Rivera, Criminal Justice Reform Chair of the Latino Action Network. "Solitary confinement is a practice that has further broken human beings already struggling with the realities and anguish of incarceration, most, who do return to our communities. This is a torturous practice that the former Administration would not even acknowledge. We applaud the Governor's resolve in keeping his word in his signature of this legislation. In this moment in our country, watching the unbearable madness of child concentration camps ripping families apart, at least in New Jersey, we say no to torture. We stand ready to work now further towards its implementation. Thank you, Governor Murphy."

"This law is a testament to its driving force: the voices of survivors of solitary confinement who led this movement to stop the suffering they were forced to endure," said ACLU-NJ Executive Director Amol Sinha. "No law can make up for the lives that have been lost – no policy can reclaim the futures that have been sacrificed to the torment of prolonged solitary confinement – but this law acknowledges that no one deserves to forfeit their humanity in long-term isolation. This turning point for New Jersey is a milestone in a powerful, unyielding national movement. We know New Jersey's historic step forward will inspire advocates and lawmakers throughout the country to make prolonged solitary confinement a thing of the past. We applaud Governor Murphy and the Legislature for prioritizing humanity by passing and signing this bill into law."

"We applaud the Governor for signing the solitary confinement bill," Richard Smith, President, New Jersey State NAACP. "We believe that, on issues related to social and economic justice, the Governor sees these issues through the lens of a former national NAACP Board member. We look forward to continuing to work with him as we transform the criminal justice system and address centuries-old problems."