

[Second Reprint]
SENATE, No. 51

STATE OF NEW JERSEY
217th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2016 SESSION

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SYNOPSIS

Restricts use of isolated confinement in correctional facilities.

CURRENT VERSION OF TEXT

As reported by the Senate Budget and Appropriations Committee on June 23, 2016, with amendments.

(Sponsorship Updated As Of: 10/21/2016)

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

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

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 ¹d. 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.¹

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

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:

¹Senate SLP committee amendments adopted March 10, 2016.

²Senate SBA committee amendments adopted June 23, 2016.

1 facility detaining persons pursuant to any intergovernmental service
2 agreement or other contract with any State, county, or federal
3 agency, including, but not limited to, United States Immigration and
4 Customs Enforcement.

5 "County correctional facility" means a county jail, penitentiary,
6 prison, or workhouse.

7 "Emergency confinement" means the isolated confinement of an
8 inmate in a correctional facility when there is reasonable cause to
9 believe that this confinement is necessary for reducing a substantial
10 risk of imminent serious harm to the inmate or others ¹, as
11 evidenced by recent conduct¹.

12 "Facility administrator" or "administrator" means the chief
13 operating officer or senior administrative designee of a correctional
14 facility.

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

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

22 "Less restrictive intervention" means a placement or conditions
23 of confinement, or both, in the current or an alternative correctional
24 facility, under conditions less restrictive of an inmate's movement,
25 privileges, activities, or social interactions.

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

29 ¹"Medical staff" means State licensed psychiatrists, physician
30 assistants, advanced practice nurses or clinical nurse specialists or,
31 for mental health evaluations or decisions, those nurses with a
32 specialty in psychiatric nursing, or comparably credentialed
33 employees or contractors employed to provide healthcare.¹

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

35 a. is 21 years of age or younger;

36 b. is ¹~~55~~ 65¹ years of age or older;

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

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

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

- 1 f. is pregnant ¹, is in the postpartum period, or has recently
2 suffered a miscarriage or terminated a pregnancy¹; **‘[or]’**¹
- 3 g. has a significant auditory or visual impairment ¹; or
- 4 h. is perceived to be lesbian, gay, bisexual, transgender, or
5 intersex¹.
- 6 “Protective custody” means confinement of an inmate in a cell or
7 similarly confined holding or living space, under conditions
8 necessary to protect the inmate or others.
- 9 “State correctional facility” means a State prison or other penal
10 institution or an institution or facility designated by the
11 commissioner as a place of confinement under section 2 of
12 P.L.1969, c.22. (C.30:4-91.2)¹.¹
- 13
- 14 4. a. The use of isolated confinement in correctional facilities in
15 this State shall be restricted as follows:
- 16 (1) Except as otherwise provided in paragraphs (1), (3), and (4)
17 of subsection d. of this section, an inmate shall not be placed in
18 isolated confinement unless there is reasonable cause to believe that
19 the inmate would create a substantial risk of immediate serious
20 harm to himself or another, ¹as evidenced by recent threats or
21 conduct,¹ and a less restrictive intervention would be insufficient to
22 reduce this risk. Except as otherwise provided in paragraphs (1),
23 (3), and (4) of subsection d. of this section, the correctional facility
24 shall bear the burden of establishing this standard ¹by clear and
25 convincing evidence¹.
- 26 (2) Except as otherwise provided in paragraphs (1), (3), and (4)
27 of subsection d. of this section, an inmate shall not be placed in
28 isolated confinement for non-disciplinary reasons.
- 29 (3) Except as otherwise provided in paragraph (1) of subsection
30 d. of this section, an inmate shall not be placed in isolated
31 confinement before receiving a personal and comprehensive
32 medical and mental health examination conducted by a clinician ¹;
33 however, in a county correctional facility, a preliminary
34 examination shall be conducted by a member of the medical staff
35 within 12 hours of confinement and the clinical examination shall
36 be conducted within 48 hours of confinement¹.
- 37 (4) Except as otherwise provided in paragraph (1) of subsection
38 d. of this section, an inmate shall only be held in isolated
39 confinement pursuant to initial procedures and reviews which
40 provide timely, fair and meaningful opportunities for the inmate to
41 contest the confinement. These procedures shall include the right to
42 an initial hearing within 72 hours of placement and a review every
43 15 days thereafter, in the absence of exceptional circumstances,
44 unavoidable delays, or reasonable postponements; the right to
45 appear at the hearing¹**[,]** ¹; the right to be represented at the
46 hearing¹**[,]** ¹; an independent hearing officer¹**[,]** ¹; and a written
47 statement of reasons for the decision made at the hearing.

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

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

9 (7) A clinician shall evaluate each inmate placed in isolated
10 confinement on a daily basis ¹, in a confidential setting outside of
11 the cell whenever possible.¹ to determine whether the inmate is a
12 member of a vulnerable population ¹; however, in a county
13 correctional facility, an inmate in isolated confinement shall be
14 evaluated by a member of the medical staff as frequently as
15 clinically indicated, but at least once a week¹. Except as otherwise
16 provided in subsection d. of this section, an inmate determined to be
17 a member of a vulnerable population shall be immediately removed
18 from isolated confinement and moved to an appropriate placement.

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

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

27 (10) Cells or other holding or living space used for isolated
28 confinement are to be properly ventilated, lit, temperature-
29 controlled, clean, and equipped with properly functioning sanitary
30 fixtures.

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

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

38 (13) An inmate held in isolated confinement shall not be denied
39 access to appropriate medical care, including emergency medical
40 care.

41 (14) An inmate shall not be directly released from isolated
42 confinement to the community during the final 180 days of the
43 inmate's term of incarceration, unless it is necessary for the safety
44 of the inmate, staff, other inmates, or the public.¹

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

1 (1) ~~'[A person]~~ An inmate¹ who is a member of a vulnerable
2 population because the ~~'[person]~~ inmate¹ is 21 years of age or
3 younger, has a disability based on mental illness, or has a
4 developmental disability:

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

8 (b) who would otherwise be placed in isolated confinement shall
9 ~~'[alternately]~~ be screened by a correctional facility clinician or the
10 appropriate screening service pursuant to the New Jersey
11 Administrative Code and, if found to meet the standards of civil
12 commitment, shall¹ be placed in a specialized unit, as designated by
13 the commissioner, or ~~'[be]'~~ civilly ~~'[admitted or]'~~ committed to
14 ~~'[an]~~ the least restrictive¹ appropriate 'short term care or
15 psychiatric¹ facility designated by the Department of Human
16 Services.

17 (2) ~~'[A person]~~ An inmate¹ who is a member of a vulnerable
18 population because the ~~'[person]~~ inmate¹ is ~~'[55]~~ 65¹ years of age
19 or older, has a serious medical condition which cannot be
20 effectively treated in isolated confinement, or is pregnant ¹, is in the
21 postpartum period, or has recently suffered a miscarriage or
22 terminated a pregnancy,¹ who would otherwise be placed in isolated
23 confinement ¹, shall alternately be placed in an appropriate
24 medical or other unit ~~'[.]'~~ as designated by the commissioner.
25 'The requirements contained in this subsection shall not apply to a
26 county correctional facility.'¹

27 c. An inmate shall not be placed in isolated confinement or in
28 any other cell or other holding or living space, in any facility, with
29 one or more inmates if there is reasonable cause to believe that
30 there is a risk of harm or harassment, intimidation, extortion, or
31 other physical or emotional abuse to that inmate or another inmate
32 in that placement.

33 d. Isolated confinement shall be permitted under limited
34 circumstances as follows:

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

- 1 (2) The facility administrator determines that an inmate should
2 be placed in emergency confinement **'[.] , provided that:'**
- 3 (a) **'[An] an'** inmate shall not be held in emergency
4 confinement for more than 24 hours; and
- 5 (b) **'[An] an'** inmate held in emergency confinement shall
6 receive an initial medical and mental health evaluation within two
7 hours **'[.]'** and a personal and comprehensive medical and mental
8 health evaluation within 24 hours ¹; however, in a county
9 correctional facility, a preliminary examination shall be conducted
10 by a member of the medical staff within 12 hours of confinement
11 and the comprehensive medical and mental health evaluation within
12 48 hours¹. Reports of these evaluations shall be immediately
13 provided to the facility administrator.
- 14 (3) A physician, based on a personal examination, determines
15 that an inmate should be placed or retained in medical isolation.
- 16 The decision to place and retain an inmate in medical isolation
17 due to a mental health emergency shall be made by a clinician based
18 on a personal examination. In any case of isolation under this
19 paragraph, a clinical review shall be conducted at least every six
20 hours and as indicated. An inmate in medical isolation pursuant to
21 this paragraph shall be placed in a mental health unit as designated
22 by the commissioner. ¹In the case of a county correctional facility,
23 a decision to place an inmate in medical isolation shall be made by
24 a member of the medical staff and be based on a personal
25 examination; clinical reviews shall be conducted within 48 hours
26 and then as clinically indicated.¹
- 27 (4) The facility administrator determines that an inmate should
28 be placed in protective custody as follows:
- 29 (a) The inmate may be placed in voluntary protective custody
30 only with informed, voluntary, written consent and when there is
31 reasonable cause to believe that confinement is necessary to prevent
32 reasonably foreseeable harm. When an inmate makes an informed
33 voluntary written request for protective custody, the correctional
34 facility shall bear the burden of establishing a basis for refusing the
35 request.
- 36 (b) The inmate may be placed in involuntary protective custody
37 only when there is clear and convincing evidence that confinement
38 is necessary to prevent reasonably foreseeable harm and that **'[no]**
39 **a'** less restrictive **'intervention'** would **'not'** be sufficient to prevent
40 **'[such] the'** harm.
- 41 (c) An inmate placed in protective custody shall receive
42 comparable opportunities for activities, movement, and social
43 interaction, consistent with their safety and the safety of others, as
44 are inmates in the general population of the facility.
- 45 (d) An inmate subject to removal from protective custody shall
46 be provided with a timely, fair, and meaningful opportunity to
47 contest the removal.

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

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

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

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

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

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

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

c. An inmate who has been placed in isolated confinement pending investigation of a disciplinary offense shall be considered for release to the general population if the inmate demonstrates good behavior while confined. If the inmate is found guilty of the disciplinary offense, the inmate's good behavior shall be considered in determining the appropriate penalty.¹

¹[5.] ^{6.1} ²[Within] Not less than² 90 days ²[of] before² the effective date of this act, the commissioner shall:

a. develop policies and implement procedures for the review of inmates placed in isolated confinement and submit proposed regulations for promulgation as required by section ¹[6] ⁷¹ of this act;

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

c. develop a plan for providing step-down and transitional units, programs, and staffing patterns to accommodate inmates currently placed in isolated confinement ², inmates who will be placed in isolated confinement, and inmates who receive an intermediate

1 sanction in lieu of being placed in isolated confinement. Staffing
2 patterns for correctional and program staff shall be set at levels
3 necessary to ensure the safety of staff and inmates under the provisions
4 of this act².

5
6 ¹**[6]** 7¹. In accordance with the "Administrative Procedure
7 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the commissioner shall
8 promulgate regulations to effectuate the provisions of this act. The
9 regulations shall include but not be limited to:

10 a. ¹**[Establishing]** establishing¹ less restrictive interventions to
11 isolated confinement, including separation from other inmates;
12 transfer to other correctional facilities; and any non-isolated
13 confinement sanction authorized by Department of Corrections
14 regulations; restrictions on religious, mail, and telephone privileges,
15 visit contacts, or outdoor and recreation access shall only be
16 imposed as is necessary for the safety of the inmate or others, but
17 shall not restrict access to food, basic necessities, or legal access;

18 b. ¹**[Requiring]** requiring¹ training of disciplinary staff and all
19 staff working with inmates in isolated confinement and requiring
20 that this training include:

21 (1) assistance from appropriate professionals ¹including, but not
22 limited to, professionals¹ in the Department of Human Services to
23 periodically train all staff working with inmates in isolated
24 confinement; ¹**[and]**¹

25 (2) standards for isolated confinement, ¹including that it shall be
26 limited to when an inmate commits an offense involving violence,
27 escapes or attempts to escape, or poses a threat to institutional
28 safety; that the maximum penalties for each offense shall be based
29 on the seriousness of the offense; and available less restrictive
30 interventions; and

31 (3)¹ the identification of developmental disabilities, and the
32 symptoms of mental illness, including trauma disorders, and
33 methods of safe responses to people in distress;

34 c. ¹**[Requiring]** requiring¹ documentation of all decisions,
35 procedures, and reviews of inmates placed in isolated confinement;

36 d. ¹**[Requiring]** requiring¹ monitoring of compliance with all
37 rules governing cells, units, and other places where inmates are
38 placed in isolated confinement;

39 e. ¹**[Requiring]** requiring¹ posting on the official website of
40 the Department of Corrections of quarterly reports on the use of
41 isolated confinement, by age, sex, gender identity, ethnicity,
42 incidence of mental illness, and type of confinement status, at each
43 facility ¹, including a county correctional facility¹ ; these reports
44 shall include the population on the last day of each quarter and a
45 non-duplicative cumulative count of people exposed to isolated
46 confinement for each fiscal year. These inmate reports also shall
47 include the incidence of emergency confinement, self-harm, suicide,

1 and assault in any isolated confinement unit, as well as explanations
2 for each instance of facility-wide lockdown. These reports shall not
3 include personally identifiable information regarding any inmate ¹;
4 and

5 f. modifying the New Jersey Administrative Code for
6 consistency with the provisions of this act and to require
7 appropriate alternative placements for vulnerable populations in
8 county correctional facilities¹.

9
10 ¹**[7.] 8.**¹ This act shall take effect on the first day of the
11 thirteenth month next following enactment, except the
12 commissioner may take any anticipatory administrative action in
13 advance as shall be necessary for the implementation of this act.