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SYNOPSIS

Restricts use of isolated confinement in correctional facilities.

CURRENT VERSION OF TEXT

As reported by the Assembly Appropriations Committee on June 18, 2019, with amendments.

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

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

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

2. The Legislature finds and declares that:

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

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

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

d. Citing the devastating and lasting psychological consequences of solitary confinement on persons detained in correctional facilities, President Obama ¹[recently]¹ adopted reforms ¹in January 2016¹ to reduce its use in federal correctional facilities, including banning restrictive housing for low-level offenders and juveniles; decreasing the maximum length of time an inmate may be held in restrictive housing from 365 days to 60 days; and increasing time spent outside the cell for inmates held in restrictive housing.

3. For the purposes of this act:

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

“Commissioner” means the Commissioner of Corrections.

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

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

“Emergency confinement” means the ¹[isolated confinement] segregation¹ of an inmate in a correctional facility when there is reasonable cause to believe that this ¹[confinement] segregation¹ is necessary for reducing a substantial risk of imminent serious harm to the inmate or others, as evidenced by recent conduct.

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

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

“Isolated confinement” means 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

¹in a State correctional facility or 22 hours or more per day in a county correctional facility¹, with severely restricted activity, movement, and social interaction. ¹Isolated confinement shall not include confinement due to a facility-wide or unit-wide lockdown that is required to ensure the safety of inmates and staff.¹

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

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

“Medical staff” means State licensed ¹~~psychiatrists~~ physicians¹, physician assistants, advanced practice nurses or clinical nurse specialists or, for mental health evaluations or decisions, those ¹registered¹ nurses with a specialty in psychiatric nursing, or comparably credentialed employees or contractors employed to provide healthcare.

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

- a. is 21 years of age or younger;
- b. is 65 years of age or older;
- c. has a disability based on a mental illness, as defined in subsection r. of section 2 of P.L.1987, c.116 (C.30:4-27.2), 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;
- d. has a developmental disability, as defined in subsection b. of section 3 of P.L.1985, c.145 (C.30:6D-25);
- e. has a serious medical condition which cannot effectively be treated in isolated confinement;
- f. is pregnant, is in the postpartum period, or has recently suffered a miscarriage or terminated a pregnancy;
- g. has a significant auditory or visual impairment; or
- h. is perceived to be lesbian, gay, bisexual, transgender, or intersex.

¹“Postpartum period” means the 45 days after childbirth.¹

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

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

4. a. The use of isolated confinement in correctional facilities in this State shall be ¹~~restricted~~ limited¹ as follows:

(1) Except as otherwise provided in paragraphs (1), (3), and (4) of subsection d. of this section, an inmate shall not be placed in isolated confinement unless there is reasonable cause to believe that the inmate would create a substantial risk of ¹~~immediate~~ serious harm to himself or another, ¹including but not limited to a correctional police officer or other employee or volunteer in the facility,¹ as evidenced by

recent threats or conduct, and a less restrictive intervention would be insufficient to reduce this risk. Except as otherwise provided in paragraphs (1), (3), and (4) of subsection d. of this section, the correctional facility shall bear the burden of establishing this standard by clear and convincing evidence.

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

(3) Except as otherwise provided in paragraph (1) of subsection d. of this section, an inmate shall not be placed in isolated confinement before receiving a personal and comprehensive medical and mental health examination conducted by a clinician; however, in a county correctional facility, a preliminary examination shall be conducted by a member of the medical staff within 12 hours of confinement and the clinical examination shall be conducted within 48 hours of confinement ¹, but if staffing levels require, the period for conducting a clinical examination may be extended to 72 hours of confinement¹.

(4) Except as otherwise provided in paragraph (1) of subsection d. of this section, an inmate shall only be held in isolated confinement pursuant to initial procedures and reviews which provide timely, fair and meaningful opportunities for the inmate to contest the confinement. These procedures shall include the right to an initial hearing within 72 hours of placement ¹absent exigent circumstances,¹ and a review every ¹[15] 30¹ 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.

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

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

(7) A clinician shall ¹[evaluate] conduct a mental health and physical health status examination for¹ 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 shall be evaluated by a member of the medical staff as frequently as clinically indicated, but at least once ¹[a] per¹ week. Except as otherwise provided in subsection d. of this section, an inmate determined to be a member of a vulnerable population shall be immediately removed from isolated confinement and moved to an appropriate placement.

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

(9) Except as otherwise provided in paragraph (1) of subsection d. of this section during a facility-wide lock down, an inmate shall not be placed in isolated confinement for more than ¹[15] 20¹ consecutive days, or for more than ¹[20] 30¹ days during any 60-day period.

(10) Cells or other holding or living space used for isolated confinement are to be properly ventilated, lit, ¹[temperature-controlled] temperature-monitored¹, clean, and equipped with properly functioning sanitary

fixtures.

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

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

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

(14) An inmate ¹in a State correctional facility.¹ shall not be directly released from isolated confinement to the community during the final 180 days of the inmate's term of incarceration, unless it is necessary for the safety of the inmate, staff, other inmates, or the public. ¹An inmate in a county correctional facility shall not be directly released from isolated confinement to the community during the final 30 days of the inmate's term of incarceration, unless it is necessary for the safety of the inmate, staff, other inmates, or the public.

(15) An inmate shall not be held in isolated confinement based on the inmate's 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.¹

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

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

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

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

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

c. An inmate shall not be placed in isolated confinement or in any other cell or other holding or living space, in any facility, with one or more inmates if there is reasonable cause to believe that there is a risk of

harm or harassment, intimidation, extortion, or other physical or emotional abuse to that inmate or another inmate in that placement.

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

(1) The facility administrator ¹or designated shift commander¹ determines that a facility-wide lock down is required to ensure the safety of inmates in the facility until the administrator ¹or shift commander¹ determines that these circumstances no longer exist. The facility administrator ¹or shift commander¹ shall document specific reasons why any lockdown is necessary for more than 24 hours, and why less restrictive interventions are insufficient to accomplish the facility's safety goals. Within ¹~~[six hours]~~ 15 days¹ commissioner shall publish the reasons on the Department of Corrections website and provide meaningful notice of the reasons for the lockdown to the Legislature.

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

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

(b) an inmate held in emergency confinement ¹in a State correctional facility¹ shall receive an initial medical and mental health evaluation ¹~~[within two hours]~~ immediately prior to placement in emergency confinement¹ and a personal and comprehensive medical and mental health evaluation within 24 examination shall be conducted by a member of the medical staff within 12 hours of confinement and the comprehensive medical and mental health evaluation within ¹~~[48]~~ 72¹ hours. Reports of these evaluations shall be immediately provided to the facility administrator.

(3) A ¹~~[physician]~~ clinician¹, based on a personal examination, determines that an inmate should be placed or retained in medical isolation.

The decision to place and retain an inmate in medical isolation due to a mental health emergency shall be made by a clinician based on a personal examination. In any case of isolation under this paragraph, a clinical review shall be conducted at least every ¹~~[six]~~ eight¹ hours and as ¹clinically¹ indicated. An inmate in medical isolation pursuant to this paragraph ¹~~[shall]~~ may¹ be placed in a mental health unit as designated by the commissioner. In the case of a county correctional facility, a decision to place an inmate in medical isolation shall be made by a member of the medical staff and be based on a personal examination; clinical reviews shall be conducted within ¹~~[48]~~ 72¹ hours and then as clinically indicated.

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

(a) ¹The facility shall keep a written record of a request by an inmate to be placed in voluntary protective custody.¹ The inmate may be placed in voluntary protective custody only with informed, voluntary ¹~~[, written]~~¹ consent and when there is reasonable cause to believe that confinement is necessary to prevent reasonably foreseeable harm. When an inmate makes an informed voluntary ¹~~[written]~~¹ request for protective custody, the correctional facility shall bear the burden of establishing a basis for refusing the request.

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

(c) An inmate placed in protective custody shall receive ¹[comparable] similar¹ opportunities for activities, movement, and social interaction, consistent with their safety and the safety of others, as are inmates in the general population of the facility.

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

(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 ¹[an extraordinary] a¹ 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.]¹

5. 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.

¹[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

6. Not less than 90 days before 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 7 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, inmates who will be placed in isolated confinement, and inmates who receive an intermediate sanction in lieu of being placed in isolated confinement. Staffing patterns for correctional and program staff shall be set at levels necessary to ensure the safety of staff and inmates under the provisions of this act.

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

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

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

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

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

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

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

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

e. requiring posting on the official website of the Department of Corrections of quarterly reports on the use of isolated confinement, ¹without revealing any personal identifying information,¹ by age, sex, gender identity, ethnicity, incidence of mental illness, and type of confinement status, at each facility, including a county correctional facility; these reports shall include the population on the last day of each quarter and a non-duplicative cumulative count of people exposed to isolated confinement for each fiscal year. These inmate reports also shall include the incidence of emergency confinement, self-harm, suicide, and assault in any isolated confinement unit ¹[, as well as explanations for each instance of facility-wide lockdown]¹. These reports shall not include personally identifiable information regarding any inmate; and

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

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