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**SENATE BILL 5639**

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**State of Washington 67th Legislature 2022 Regular Session**

**By** Senators C. Wilson, Das, Hunt, Nguyen, and Saldaña

AN ACT Relating to solitary confinement; amending RCW 72.68.010 and 72.09.015; adding new sections to chapter 72.09 RCW; creating new sections; providing effective dates; and providing expiration dates.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  This act may be known and cited as the solitary confinement restriction act.

NEW SECTION. **Sec.**  (1) The legislature finds that more than 700 adults continue to be held in solitary confinement in state correctional facilities. Solitary confinement has been shown to create devastating and lasting psychological impacts. Recent studies have shown that persons placed in solitary confinement have higher rates of medical concerns and a shorter life expectancy once released to the community. Studies have also shown that persons released to the community directly from solitary confinement have higher recidivism rates. Further, solitary confinement is disproportionately imposed upon Black, indigenous, and Hispanic people in state correctional facilities.

(2) Therefore, the legislature finds that the use of solitary confinement in state correctional facilities should be restricted to ensure the safe and humane operation of these facilities, consistent with the state and federal Constitutions, the laws and public policies of this state, the mission of the correctional system, evolving medical knowledge, and international human rights standards that have recognized prolonged solitary confinement as torture. Solitary 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 a person's brain. The standards established in this act apply to all incarcerated persons in the custody of the department of corrections.

**Sec.**  RCW 72.68.010 and 2021 c 200 s 7 are each amended to read as follows:

(1) Whenever in its judgment the best interests of the state or the welfare of any incarcerated individual confined in any penal institution will be better served by his or her transfer to another institution or to a foreign country of which the incarcerated individual is a citizen or national, the secretary may effect such transfer consistent with applicable federal laws and treaties. The secretary has the authority to transfer incarcerated individuals between in-state correctional facilities or to out-of-state governmental institutions if the secretary determines that transfer is in the best interest of the state or the incarcerated individual. The determination of what is in the best interest of the state or incarcerated individual may include but is not limited to considerations of overcrowding, emergency conditions, or hardship to the incarcerated individual. In determining whether the transfer will impose a hardship on the incarcerated individual, the secretary shall consider: (a) The location of the incarcerated individual's family and whether the incarcerated individual has maintained contact with members of his or her family; (b) whether, if the incarcerated individual has maintained contact, the contact will be significantly disrupted by the transfer due to the family's inability to maintain the contact as a result of the transfer; and (c) whether the incarcerated individual is enrolled in a vocational or educational program that cannot reasonably be resumed or completed if the incarcerated individual is transferred to another correctional institution or returned to the state. An incarcerated person under the authority of the department transferred to a governmental institution in another state pursuant to a state contract or agreement may not be placed in solitary confinement unless such confinement complies with sections 5 through 10 of this act.

(2)(a) The secretary has the authority to transfer incarcerated individuals to an out-of-state private correctional entity only if:

(i) The governor finds that an emergency exists such that the population of a state correctional facility exceeds its reasonable, maximum capacity, resulting in safety and security concerns;

(ii) The governor has considered all other legal options to address capacity, including those pursuant to RCW 9.94A.870;

(iii) The secretary determines that transfer is in the best interest of the state or the incarcerated individual; and

(iv) The contract with the out-of-state private correctional entity includes requirements for access to public records to the same extent as if the facility were operated by the department, incarcerated individual access to the office of the corrections ombuds, compliance with sections 5 through 10 of this act with respect to the restrictions on solitary confinement, and inspections and visits without notice.

(b) Should any of these requirements in this subsection not be met, the contract with the private correctional entity shall be terminated.

(3) If directed by the governor, the secretary shall, in carrying out this section and RCW 43.06.350, adopt rules under chapter 34.05 RCW to effect the transfer of incarcerated individuals requesting transfer to foreign countries.

**Sec.**  RCW 72.09.015 and 2020 c 319 s 2 are each amended to read as follows:

The definitions in this section apply throughout this chapter.

(1) "Adult basic education" means education or instruction designed to achieve general competence of skills in reading, writing, and oral communication, including English as a second language and preparation and testing services for obtaining a high school diploma or a high school equivalency certificate as provided in RCW 28B.50.536.

(2) "Base level of correctional services" means the minimum level of field services the department of corrections is required by statute to provide for the supervision and monitoring of offenders.

(3) "Civil judgment for assault" means a civil judgment for monetary damages awarded to a correctional officer or department employee entered by a court of competent jurisdiction against an inmate that is based on, or arises from, injury to the correctional officer or department employee caused by the inmate while the correctional officer or department employee was acting in the course and scope of his or her employment.

(4) "Community custody" has the same meaning as that provided in RCW 9.94A.030 and also includes community placement and community supervision as defined in RCW 9.94B.020.

(5) "Contraband" means any object or communication the secretary determines shall not be allowed to be: (a) Brought into; (b) possessed while on the grounds of; or (c) sent from any institution under the control of the secretary.

(6) "Correctional facility" means a facility or institution operated directly or by contract by the secretary for the purposes of incarcerating adults in total or partial confinement, as defined in RCW 9.94A.030.

(7) "County" means a county or combination of counties.

(8) "Department" means the department of corrections.

(9) "Earned early release" means earned release as authorized by RCW 9.94A.729.

(10) "Evidence‑based" means a program or practice that has had multiple‑site random controlled trials across heterogeneous populations demonstrating that the program or practice is effective in reducing recidivism for the population.

(11) "Extended family visit" means an authorized visit between an inmate and a member of his or her immediate family that occurs in a private visiting unit located at the correctional facility where the inmate is confined.

(12) "Good conduct" means compliance with department rules and policies.

(13) "Good performance" means successful completion of a program required by the department, including an education, work, or other program.

(14) "Immediate family" means the inmate's children, stepchildren, grandchildren, great grandchildren, parents, stepparents, grandparents, great grandparents, siblings, aunts, uncles, and a person legally married to or in a state registered domestic partnership with an inmate. "Immediate family" includes the immediate family of an inmate who was adopted as a child or an adult, but does not include an inmate adopted by another inmate.

(15) "Indigent inmate," "indigent," and "indigency" mean an inmate who has less than a twenty-five dollar balance of disposable income in his or her institutional account on the day a request is made to utilize funds and during the thirty days previous to the request.

(16) "Individual reentry plan" means the plan to prepare an offender for release into the community. It should be developed collaboratively between the department and the offender and based on an assessment of the offender using a standardized and comprehensive tool to identify the offender's risks and needs. The individual reentry plan describes actions that should occur to prepare individual offenders for release from prison or jail, specifies the supervision and services they will experience in the community, and describes an offender's eventual discharge to aftercare upon successful completion of supervision. An individual reentry plan is updated throughout the period of an offender's incarceration and supervision to be relevant to the offender's current needs and risks.

(17) "Inmate" ((~~means~~)) and "incarcerated person" mean a person committed to the custody of the department, including but not limited to persons residing in a correctional institution or facility and persons released from such facility on furlough, work release, or community custody, and persons received from another state, state agency, county, or federal jurisdiction.

(18) "Labor" means the period of time before a birth during which contractions are of sufficient frequency, intensity, and duration to bring about effacement and progressive dilation of the cervix.

(19) "Physical restraint" means the use of any bodily force or physical intervention to control an offender or limit an offender's freedom of movement in a way that does not involve a mechanical restraint. Physical restraint does not include momentary periods of minimal physical restriction by direct person-to-person contact, without the aid of mechanical restraint, accomplished with limited force and designed to:

(a) Prevent an offender from completing an act that would result in potential bodily harm to self or others or damage property;

(b) Remove a disruptive offender who is unwilling to leave the area voluntarily; or

(c) Guide an offender from one location to another.

(20) "Postpartum recovery" means (a) the entire period a woman or youth is in the hospital, birthing center, or clinic after giving birth and (b) an additional time period, if any, a treating physician determines is necessary for healing after the woman or youth leaves the hospital, birthing center, or clinic.

(21) "Privilege" means any goods or services, education or work programs, or earned early release days, the receipt of which are directly linked to an inmate's (a) good conduct; and (b) good performance. Privileges do not include any goods or services the department is required to provide under the state or federal Constitution or under state or federal law.

(22) "Promising practice" means a practice that presents, based on preliminary information, potential for becoming a research‑based or consensus‑based practice.

(23) "Research‑based" means a program or practice that has some research demonstrating effectiveness, but that does not yet meet the standard of evidence‑based practices.

(24) "Restraints" means anything used to control the movement of a person's body or limbs and includes:

(a) Physical restraint; or

(b) Mechanical device including but not limited to: Metal handcuffs, plastic ties, ankle restraints, leather cuffs, other hospital-type restraints, tasers, or batons.

(25) "Secretary" means the secretary of corrections or his or her designee.

(26) "Significant expansion" includes any expansion into a new product line or service to the class I business that results from an increase in benefits provided by the department, including a decrease in labor costs, rent, or utility rates (for water, sewer, electricity, and disposal), an increase in work program space, tax advantages, or other overhead costs.

(27) "Superintendent" means the superintendent of a correctional facility under the jurisdiction of the Washington state department of corrections, or his or her designee.

(28) "Transportation" means the conveying, by any means, of an incarcerated pregnant woman or youth from the correctional facility to another location from the moment she leaves the correctional facility to the time of arrival at the other location, and includes the escorting of the pregnant incarcerated woman or youth from the correctional facility to a transport vehicle and from the vehicle to the other location.

(29) "Unfair competition" means any net competitive advantage that a business may acquire as a result of a correctional industries contract, including labor costs, rent, tax advantages, utility rates (water, sewer, electricity, and disposal), and other overhead costs. To determine net competitive advantage, the department of corrections shall review and quantify any expenses unique to operating a for-profit business inside a prison.

(30) "Vocational training" or "vocational education" means "vocational education" as defined in RCW 72.62.020.

(31) "Washington business" means an in-state manufacturer or service provider subject to chapter 82.04 RCW existing on June 10, 2004.

(32) "Work programs" means all classes of correctional industries jobs authorized under RCW 72.09.100.

(33) "Qualified medical provider" means a physician, physician assistant, advanced registered nurse practitioner, clinical nurse specialist, or other comparably credentialed employee or contractor employed to provide health care, or for mental health evaluations or decisions, a state-licensed psychiatrist, a registered nurse with a specialty in psychiatric nursing, or other comparably credentialed employee or contractor employed to provide mental health care.

(34) "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 incarcerated person's movement, privileges, activities, or social interactions than solitary confinement.

(35) "Solitary confinement" means the confinement of an incarcerated person in a cell or similarly confined holding or living space, alone or with other incarcerated persons, for 17 hours or more per day.

(36) "Vulnerable person" means any incarcerated person who:

(a) Is 25 years of age or younger;

(b) Is 55 years of age or older;

(c) Has a mental disorder, as defined in RCW 71.05.020, or where there is evidence of a diagnosis of a serious mental illness, a history of psychiatric hospitalization, or a history of disruptive or self-injurious behavior including, but not limited to, serious and/or repeated self-harm, that may be the result of a mental disorder or condition;

(d) Has a developmental disability, as defined in RCW 71A.10.020;

(e) Has a serious medical condition that cannot effectively be treated in solitary confinement;

(f) Is pregnant, in the postpartum period, or has recently suffered a miscarriage or terminated a pregnancy;

(g) Has needs related to a physical disability that cannot be accommodated in solitary confinement; or

(h) Has a significant auditory or visual impairment.

NEW SECTION. **Sec.**  A new section is added to chapter 72.09 RCW to read as follows:

RESTRICTIONS ON SOLITARY CONFINEMENT.

An incarcerated person may not be placed in solitary confinement except when necessary for emergency purposes in section 6 of this act, medical isolation in section 7 of this act, or a facility-wide lockdown in section 8 of this act, or when the incarcerated person voluntarily requests such confinement conditions in section 9 of this act.

NEW SECTION. **Sec.**  A new section is added to chapter 72.09 RCW to read as follows:

(1) SOLITARY CONFINEMENT FOR EMERGENCY PURPOSES.

An incarcerated person may be placed in solitary confinement for emergency purposes if: The incarcerated person has not been determined to be a vulnerable person; the superintendent of the correctional facility finds that there is reasonable cause to believe that the solitary confinement is necessary to reduce or protect against a substantial risk of immediate serious harm to the incarcerated person or another person, as evidenced by recent threats or conduct; and the superintendent of the correctional facility finds that a less restrictive intervention would insufficiently reduce this risk.

(2) INITIAL MEDICAL EVALUATION. A qualified medical provider shall conduct a personal and comprehensive medical and mental health examination of the incarcerated person prior to the incarcerated person being placed in solitary confinement under this section, unless there is reasonable cause to believe that such advance evaluation would create a substantial threat to security or safety, in which case the qualified medical provider shall conduct the evaluation within one hour of the person being placed in solitary confinement. The examination must include an assessment as to whether the incarcerated person is a vulnerable person. A report of the evaluations must be immediately provided to the superintendent and the secretary.

(3)(a) 24-HOUR LIMIT. Except for extended solitary confinement as provided in (b) of this subsection, an incarcerated person may not be held in solitary confinement for emergency purposes under this section for more than 24 consecutive hours and for more than 72 cumulative hours in any 30-day period.

(b) EXTENDED SOLITARY CONFINEMENT AND ONGOING REVIEW. An incarcerated person may not be placed in extended solitary confinement for more than 15 consecutive days and for more than 45 cumulative days during a single fiscal year. For an incarcerated person in extended solitary confinement:

(i) A qualified medical provider shall conduct a daily mental health and physical health status examination of the incarcerated person, in a confidential setting outside of the cell unless doing so would present a substantial threat to security or safety; and

(ii) The department shall provide the incarcerated person with timely, fair, and meaningful opportunities to contest the extended solitary confinement, including: An initial hearing within 72 hours of placement; the right to appear at the hearing; the right to request assistance at the hearing by a lay advisor or other person of the incarcerated person's choosing, including but not limited to other incarcerated individuals, outside advocates, or retained counsel; an independent hearing officer; a written statement of reasons for the decision made at the hearing; and a written statement on how to appeal a hearing determination.

(4) VULNERABLE PERSONS. If the incarcerated person is determined to be a vulnerable person during the initial examination under subsection (2) of this section or any status examination under subsection (3)(b) of this section, then the incarcerated person must be removed from solitary confinement and, if necessary, transferred to an appropriate residential treatment unit, medical unit, or other appropriate or specialized unit designated by the secretary. If the incarcerated person is identified as a vulnerable person due to having a mental disorder or developmental disability, as identified in RCW 72.09.015, the incarcerated person may also be screened by a qualified medical provider for transfer to the least restrictive appropriate short-term care or psychiatric facility designated by the department of social and health services pursuant to RCW 72.68.031.

NEW SECTION. **Sec.**  A new section is added to chapter 72.09 RCW to read as follows:

SOLITARY CONFINEMENT FOR MEDICAL ISOLATION.

(1) An incarcerated person may be placed in solitary confinement for medical isolation if a qualified medical provider determines, based on a personal examination, that such confinement is necessary for medical reasons, which may include, but are not limited to, responding to a medical or mental health emergency or preventing the spread of a communicable disease.

(2) For any incarcerated person placed in solitary confinement under this section, an in-person clinical review must be conducted at least every six hours and as clinically indicated. An incarcerated person in solitary confinement under this section must be placed in a residential treatment unit, a close observation unit, or a medical unit, designated by the secretary.

(3) An incarcerated person may not be placed in solitary confinement under this section for more than 15 consecutive days and for more than 45 cumulative days during a single fiscal year, unless a qualified medical provider determines that additional time is necessary: To prevent the spread of a communicable disease; to facilitate the provision of medical treatment to the incarcerated person; or for some other clearly stated medical purpose. If additional time is deemed necessary, the medical provider shall document specific reasons why the isolation is required and why less restrictive interventions are insufficient to accomplish the safety of incarcerated persons in the facility. Such notice will be forwarded to the facility superintendent for consideration and final approval.

NEW SECTION. **Sec.**  A new section is added to chapter 72.09 RCW to read as follows:

SOLITARY CONFINEMENT FOR A FACILITY-WIDE LOCKDOWN.

An incarcerated person may be placed in solitary confinement during a facility-wide lockdown if the superintendent determines that a facility-wide lockdown is required to ensure the safety of incarcerated persons in the facility. If a facility-wide lockdown exceeds 24 hours, the superintendent shall document specific reasons for the lockdown and why less restrictive interventions are insufficient to accomplish the safety of incarcerated persons in the facility. Within seven days of initiating any facility-wide lockdown that exceeds 24 hours in length, the department shall publish the reasons for the lockdown on the department's website and provide meaningful written notice of the lockdown to the office of the corrections ombuds, the governor, and the appropriate committees of the legislature.

NEW SECTION. **Sec.**  A new section is added to chapter 72.09 RCW to read as follows:

VOLUNTARY SOLITARY CONFINEMENT.

(1) An incarcerated person may be placed in solitary confinement if: The person is not a vulnerable person; the person has capacity to make an informed decision about placement in solitary confinement; there is reasonable cause to believe that solitary confinement is necessary to prevent reasonably foreseeable harm; and the incarcerated person voluntarily requests such confinement conditions.

(2) An incarcerated person may be placed in solitary confinement under this section only if the person provides informed, written consent. If an incarcerated person initiates an informed, written request for solitary confinement under this section, the correctional facility has the burden of establishing a basis for refusing the request. The department shall maintain a written record of any request provided under this section. Prior to declining a request or removing an incarcerated person who previously requested solitary confinement under this section, the department shall provide the incarcerated person with a timely, fair, and meaningful opportunity to contest the decision. An incarcerated person in solitary confinement under this section may revoke his or her request to such confinement conditions by providing informed, written notice, in which case the incarcerated person must be transferred to a less restrictive intervention or other appropriate setting.

(3) LESS RESTRICTIVE INTERVENTION. The department shall make a less restrictive intervention available to any incarcerated person requesting solitary confinement who meets the standard under subsection (1) of this section, which may include provision of accommodations in the general population, a transfer to the general population of another institution or to a unit designated for incarcerated persons who face similar threats, or other specialized housing, as appropriate. A transfer to an out-of-state facility is not a less restrictive intervention under this section unless such a transfer is requested by the incarcerated person. The department shall notify the incarcerated person of the available less restrictive intervention when receiving any request under subsection (1) of this section and shall formulate an individualized intervention plan that addresses the support or services the person may need to move to a less restrictive intervention.

(4) A person who has requested solitary confinement under this section must be assessed by a qualified medical provider every 90 days. If the qualified medical provider finds that continued placement in solitary confinement would be detrimental to the health or well-being of the incarcerated person, the incarcerated person must be transferred to a less restrictive intervention.

NEW SECTION. **Sec.**  A new section is added to chapter 72.09 RCW to read as follows:

CONDITIONS OF SOLITARY CONFINEMENT.

(1) The department shall maximize the amount of time that an incarcerated person held in solitary confinement spends outside of the cell by providing outdoor and indoor recreation, education, clinically appropriate treatment therapies, and skill-building activities. Cells or other holding or living spaces used for solitary confinement must be properly ventilated, appropriately lit according to the time of day, temperature-monitored, clean, and equipped with properly functioning sanitary fixtures.

(2) The department may not deny an incarcerated person held in solitary confinement access to food, water, or any other basic necessity, or access to appropriate medical care, including emergency medical care.

(3) The department may not deny an incarcerated person held in solitary confinement access to the telephone, personal communication or media devices, reading materials, or personal hygiene items unless an individualized assessment determines that limitation of such items is directly necessary for the safety of the incarcerated person or others. The department may use restraints upon an incarcerated person in solitary confinement to facilitate movement or programming if an individualized assessment determines such restraint is directly necessary for the safety of the incarcerated person or others.

(4) The department may not directly release an incarcerated person from solitary confinement to the community, unless it is necessary for the safety of the incarcerated person, staff, other incarcerated persons, or the public.

(5) The department may not place an incarcerated person in solitary confinement based on the incarcerated person'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.

NEW SECTION. **Sec.**  A new section is added to chapter 72.09 RCW to read as follows:

SOLITARY CONFINEMENT POLICIES AND PROCEDURES.

(1) By January 1, 2023, the department shall review the status of each incarcerated person in solitary confinement. The department shall develop a plan to transition those incarcerated persons to less restrictive interventions or other appropriate settings. Any incarcerated person who has been in solitary confinement for longer than 45 days as of July 1, 2023, must have a trauma-informed, culturally appropriate individualized intervention plan to facilitate a transition to a less restrictive intervention, which may include an evaluation for possible single cell placement, access to and treatment by medical and mental health providers, peer supports, substance abuse programming, restorative justice programming, behavioral programming, or other individualized interventions or accommodations.

(2) By January 1, 2023, the secretary shall adopt any rules or policies necessary to implement sections 5 through 10 of this act, including for the purposes of:

(a) Establishing less restrictive interventions to solitary confinement, including means of separating or protecting incarcerated persons without use of solitary confinement;

(b) Establishing that restrictions on religious, mail, and telephone privileges, visit contacts, and outdoor and indoor recreation may be imposed only after an individualized assessment that determines restrictions are directly necessary for the safety of the incarcerated person or others, and that there may not be restrictions on access to food, basic necessities, or legal access;

(c) Requiring training of staff working with incarcerated persons in solitary confinement and requiring that this training include: Assistance from appropriate professionals including, but not limited to, professionals in the department of social and health services to periodically train all staff working with incarcerated persons in solitary confinement and alternatives to such confinement; and the identification and response to incarcerated persons in need of physical accommodations who have been referred to solitary confinement;

(d) Requiring documentation of all decisions, procedures, and reviews of incarcerated persons placed in solitary confinement;

(e) Requiring monitoring of compliance with all rules and policies governing cells, units, and other places where incarcerated persons are placed in solitary confinement;

(f) Establishing procedures for hearings under section 6(3)(b) of this act; and

(g) Requiring posting on the official website of the department monthly reports, beginning July 1, 2023, on the use of solitary confinement, including: The rate of solitary confinement by category, age, sex, gender identity, ethnicity, or incidence of a mental disorder; the number of people released from solitary confinement directly to the community; the mean and median period of solitary confinement at each facility, including the population on the last day of each quarter and a nonduplicative cumulative count of people exposed to solitary confinement for each fiscal year; the incidence of self-harm, suicide, and assault in any solitary confinement unit; the number of people held in medical isolation; and the incidence and reasons for any facility-wide lockdowns. Reports may not include personally identifiable information regarding any incarcerated person.

NEW SECTION. **Sec.**  (1) A governing unit of a city or county operating one or more jails shall compile on a monthly basis through July 1, 2023, the following information with respect to each jail operated by the governing unit:

(a) The number of times solitary confinement was used;

(b) The circumstances leading to the use of solitary confinement; and

(c) For each instance of solitary confinement, the length of time the individual remained in solitary confinement, whether a supervisory review of the solitary confinement occurred and was documented, whether a medical assessment or review and a mental health assessment or review were conducted and documented, and whether the affected person was afforded full access to education, programming, and ordinary necessities such as medication, meals, and reading material during the term of solitary confinement.

(2) Information collected under subsection (1) of this section must be compiled into a monthly report and submitted to the Washington association of sheriffs and police chiefs.

(3) For the purposes of this section, "solitary confinement" means confinement of an incarcerated person in a cell or similarly confined holding or living space, alone or with other incarcerated persons, for 17 hours or more per day.

(4) This section expires December 31, 2023.

NEW SECTION. **Sec.**  (1) Subject to the availability of amounts appropriated for this specific purpose, the Washington association of sheriffs and police chiefs shall collect, on a monthly basis, the information submitted under section 11 of this act. The collected information must be compiled into a report summarizing the information by county and type of facility. An initial report must be submitted, in compliance with RCW 43.01.036, to the governor and the appropriate committees of the legislature by December 1, 2022. A final report must be submitted, in compliance with RCW 43.01.036, to the governor and the appropriate committees of the legislature by December 1, 2023.

(2) This section expires December 31, 2023.

NEW SECTION. **Sec.**  The secretary of the department of corrections may adopt rules to implement this act.

NEW SECTION. **Sec.**  Sections 1 through 10 of this act take effect July 1, 2023.

NEW SECTION. **Sec.**  Sections 11 through 14 of this act take effect July 1, 2022.

**--- END ---**