SENATE BILL REPORT
SB 5413

As of February 9, 2021

Title: An act relating to solitary confinement.

Brief Description: Concerning solitary confinement.

Sponsors: Senators Wilson, C., Darneille, Das, Dhingra, Frockt, Hunt, Kuderer, Liias, Lovelett, Nguyen and Saldaña.

Brief History:
Committee Activity: Human Services, Reentry & Rehabilitation: 2/09/21.

Brief Summary of Bill

- Restricts the use of solitary confinement in state correctional facilities, except in certain limited circumstances.
- Requires the Secretary of the Department of Corrections to adopt certain regulations, policies, and procedures.
- Directs cities and counties that operate jails to compile specific information on the use of solitary confinement at each jail and submit to the Washington Association of Sheriffs and Police Chiefs (WASPC).
- Requires WASPC to submit both an initial and updated report to the Legislature.

SENATE COMMITTEE ON HUMAN SERVICES, REENTRY & REHABILITATION

Staff: Kelsey-anne Fung (786-7479)

Background: Solitary Confinement. In 2015, the United Nations adopted standard minimum rules for the treatment of prisoners, known as the Nelson Mandela Rules, which define solitary confinement as confinement of prisoners for 22 hours or more a day without

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meaningful human contact. Prolonged solitary confinement refers to solitary confinement for a period exceeding 15 consecutive days. According to these rules, solitary confinement must only be used in exceptional cases as a last resort, and imposition of solitary confinement should be prohibited for prisoners with mental or physical disabilities when their conditions would be exacerbated by such measures.

State Correctional Facilities. The Washington State Department of Corrections (DOC) has an internal policy governing restrictive housing. Restrictive housing is housing for incarcerated individuals whose continued presence in the general population would pose a serious threat to employees, themselves, other individuals, or to the security of a correctional facility. Restrictive housing includes administrative segregation, prehearing confinement, disciplinary segregation, maximum custody, and close observation.

According to the policy, whenever possible, individuals must be taken to health services for an assessment and review before initial placement in restrictive housing unless there is a risk to staff safety. When an individual is transferred to restrictive housing, a mental health assessment will be conducted within one business day. If the facility does not have mental health services, a medical employee will complete the assessment. Individuals in restrictive housing must be provided certain conditions of confinement unless safety and security concerns dictate otherwise. Conditions of confinement include, among other services and items specified in the policy, adequate lighting and ventilation; reasonable room temperature for the season; meals of similar quality and quantity as provided to the general population; access to personal hygiene items; opportunity to shower and shave; access to telephone, mail and correspondence supplies, reading materials, and legal representation materials; and visits with individuals on the person's approved visitor list. Unless medical attention is needed more frequently, individuals in restrictive housing will receive a daily visit from a health care provider.

The policy also addresses modifications to conditions of confinement, security enhancement plans, disruptive hygiene behavior, health and mental health services, cell checks, and direct release from restrictive housing to the community. DOC has separate internal policies governing administrative segregation and maximum custody placement, transfer, and release.

In 2011 and 2019, DOC partnered with the Vera Institute of Justice to reduce DOC's use of restrictive housing by finding safer and more effective alternatives. The goals of the partnership include eliminating the use of restrictive housing for vulnerable adults, especially those with serious mental illness, improving living conditions, and significantly reducing the length of overall time people spend in such housing.

Juvenile Solitary Confinement. In 2020, the Legislature passed legislation that prohibited the use of solitary confinement for juveniles in a detention facility or institution. The legislation set parameters and limited the use of total isolation and room confinement.

Summary of Bill: The use of solitary confinement in correctional facilities is restricted. Except in cases of a facility-wide lockdown, medical isolation, or protective custody, an incarcerated person may not be placed in solitary confinement unless the person would create a substantial risk of immediate serious harm and a less restrictive intervention would be insufficient to reduce this risk.

Except when there is a facility-wide lockdown, an incarcerated person must first receive a personal and comprehensive medical and mental health exam by a qualified medical provider unless advance evaluation would create a substantial threat to security or safety. In these instances, an evaluation must occur within one hour of being placed in solitary confinement. An incarcerated person must only be held in solitary confinement pursuant to procedures that provide timely, fair, and meaningful opportunities for the person to contest the confinement.

On a daily basis, a qualified medical provider must conduct a mental health and physical health exam for each person in solitary confinement in a confidential setting outside of the cell to determine whether the person is a member of a vulnerable population. A person determined to be a member of a vulnerable population must be immediately removed from solitary confinement and moved to an appropriate placement, subject to certain exceptions.

A person may not be directly released from solitary confinement to the community, unless necessary. A person may not be held in solitary confinement based on the person's race, creed, color, national origin, nationality, ancestry, age, or marital status, among other things.

Conditions of Solitary Confinement. Except in cases of a facility-wide lockdown, an incarcerated person may not be placed in solitary confinement for more than 15 consecutive days, or for more than 45 cumulative days during a single fiscal year. Requirements are set forth for ventilation, lighting, temperature, sanitary fixtures, and maximizing the amount of time that a person held in solitary confinement spends outside of the cell. An incarcerated person may not be denied access to food, water, or any other basic necessity, or appropriate medical care including emergency medical care.

Member of a Vulnerable Population. A person who is a member of a vulnerable population due to a mental disorder or developmental disability may not be disciplined for refusing medication, self-harming, or other behavior due to a disability, and must be screened by a qualified medical provider for placement in a residential treatment unit or close observation unit, or transferred to the least restrictive appropriate short-term care or psychiatric facility designated by the Department of Social and Health Services.

A person who is a member of a vulnerable population, due to reasons other than mental disorder or developmental disability, and would otherwise be placed in solitary confinement, must be placed in an appropriate medical or other unit designated by the DOC secretary.

Circumstances Permitting Solitary Confinement. Solitary confinement must be permitted in cases of a facility-wide lockdown, emergency confinement, medical isolation, and protective custody. If a facility-wide lockdown is required, the superintendent or designee must document specific reasons why any lockdown for more than 24 hours is necessary and why less restrictive interventions are insufficient to accomplish the facility's safety goals. Within seven days, the DOC secretary must publish the reasons for the lockdown on DOC's website and provide meaningful notice to the Legislature and Office of Corrections Ombuds.

If the superintendent finds a person should be placed in emergency confinement, the person may not be held for more than 24 consecutive hours and for no more than 72 cumulative hours in a 30-day period. The person must receive an initial in-person medical and mental health evaluation prior to being placed in emergency confinement unless advance evaluation would create a substantial threat to security or safety. In these instances, an evaluation must occur within one hour of placement. Medical staff must conduct a comprehensive medical and mental health evaluation within 12 hours of emergency confinement.

If a qualified medical provider finds a person should be placed or retained in medical isolation, including for reasons due to a mental health emergency, the person must be placed in a residential treatment unit, close observation unit, or medical unit, as designated by the DOC secretary. An in-person clinical review must be conducted at least every six hours and as clinically indicated.

Procedures for protective custody must be followed. The facility must keep a written record of a person's request to be placed in voluntary protective custody. A person may be placed in voluntary protective custody only with informed, written consent and when confinement is necessary to prevent reasonably foreseeable harm. When a person makes a request, the facility bears the burden of establishing a basis for refusing the request. A person only may be placed in solitary confinement for involuntary protective custody for no more than 72 hours when there is clear and convincing evidence confinement is necessary to prevent reasonably foreseeable harm and a less restrictive intervention would be insufficient to prevent the harm. The superintendent must place the person in a less restrictive intervention, including transfer to another institution or unit designated for persons who face similar threats, before placing the person in voluntary or involuntary protective custody, unless the person poses an extraordinary security risk.

Disciplinary Offense. A person may not be placed in solitary confinement pending investigation of a disciplinary offense unless the superintendent has either granted approval in an emergency situation, or finds the person's presence in the general population poses a serious and imminent danger. The superintendent must 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 serious misconduct. Placement pending investigation of a disciplinary offense must be reviewed within 24 hours.

A person in solitary confinement pending investigation of a disciplinary offense must be considered for release to the general population every 24 hours, and if the person demonstrates good behavior in that period, they must be released. If the person is found guilty of the disciplinary offense, good behavior must be considered in penalty decisions. A person may not remain in solitary confinement pending investigation for more than 15 days.

Regulations. The DOC secretary must develop policies and implement procedures to review persons placed in solitary confinement; review each person currently in solitary confinement based on the policies and procedures; develop a plan for step-down and transitional units, programs, and staffing patterns to accommodate persons placed in solitary confinement or who receive intermediate sanctions instead of being placed in solitary confinement; and adopt regulations.

The regulations must:

- establish less restrictive interventions to solitary confinement;
- require restrictions on privileges, visits, and recreation be imposed only as directly necessary, and prohibit restrictions on access to food, basic necessities, or legal access;
- require staff training that must include assistance from appropriate professionals, standards for limiting the use of solitary confinement to certain offenses, identification of developmental disabilities and safe response to persons in distress, and identification and response to persons in need of physical accommodations;
- require documentation of all decisions, procedures, and reviews of persons placed in solitary confinement;
- require monitoring of compliance with rules governing cells, units, and other places where persons are placed in solitary confinement; and
- require the posting of monthly reports on DOC's website on the use of solitary confinement and other specified information.

Local Jails. A city or county operating one or more jails must compile a monthly report until June 1, 2021, that includes specified information on each jail's use of solitary confinement. The report must be submitted to the Washington Association of Sheriffs and Police Chiefs (WASPC), who must compile the information into a report that summarizes the information by county and facility type. WASPC must submit an initial report to the appropriate committees of the Legislature by December 1, 2021, and an updated report by December 1, 2022.

Appropriation: None.

Fiscal Note: Requested on February 2, 2021.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill takes effect on August 1, 2022.

Staff Summary of Public Testimony: PRO: Solitary confinement and isolation negatively affects mental and physical health conditions, leads to psychological harm, anxiety, and trauma, and goes beyond incarceration and continues to haunt individuals after release. Isolation is even more harmful for individuals with disabilities who are more likely to be housed in solitary confinement, which can aggravate the health conditions they already have. The United Nations has adopted policies that discourage and strictly limit the use of solitary confinement based on the obligation to treat all prisoners as human beings. This is a brutal and inhumane practice that does not promote public safety or a person's rehabilitation or successful reentry, but continues to be used as a tool for prison management and control. This is a form of sanctioned torture that dehumanizes society and also negatively affects families and correctional officers. It is time to move beyond this practice and external pressure is needed.

The bill will also promote transparency and data collection on solitary confinement practices in local correctional facilities. There should not be double standards for prisons and jails.

OTHER: DOC has been trying to reduce the use and frequency of restrictive housing and has been working with research and prison reform groups on strategies and alternatives to solitary confinement. The bill would create significant expenses and challenges for DOC.

DOC administrative barriers and snafus often lead to extended periods of time persons spend in solitary confinement. The pandemic has exacerbated the issue, but it existed before the pandemic. There is always a safety or security reason for placement in solitary confinement, and DOC should shorten the amount of time a person may be held in solitary confinement.

Persons Testifying: PRO: Senator Claire Wilson, Prime Sponsor; Marc Stern; Byron Coates,; Loretta Pedersen; Nick Straley, Columbia Legal Services; Noreen Light, Washington Coalition for Prison Reform; Melody Simle, Washington Coalition for Prison Reform; David Cloud, AMEND at University of California, San Francisco; Suzanne Cook, Washington Coalition for Prison Reform; Rachael Seevers, Disability Rights Washington; Joseph Wolf; Tamara Light; Richard Carmichael, Disability Rights Washington; Tom Ewell, Quaker Voice; David Detloff; Jaime Hawk, ACLU of Washington.

OTHER: Stephen Sinclair, Department of Corrections; Tim Thrasher, Department of Corrections; James McMahan, Washington Association of Sheriffs and Police Chiefs; Joanna Carns, Office of the Corrections Ombuds.

Persons Signed In To Testify But Not Testifying: No one.