Washington State
House of Representatives
Office of Program Research

BILL ANALYSIS

Community Safety, Justice, & Reentry Committee

HB 1087

Brief Description: Concerning solitary confinement.

Sponsors: Representatives Peterson, Simmons, Berry, Bateman, Reed and Ramel.

Brief Summary of Bill

- Defines "solitary confinement" as 20 hours per day in which an incarcerated or detained individual is alone.
- Restricts the use of solitary confinement in state correctional facilities and long-term private detention facilities, to three categories: emergency purposes, medical isolation, or voluntary request.
- Specifies conditions for solitary confinement, including accessing external activities, specifying living space conditions, providing basic necessities, ensuring access to communication and personal hygiene, limiting direct release to the community, and preventing discriminatory use of solitary confinement.
- Requires transition plans, data collection, and reports by agencies, long-term private detention facilities, city and county jails, and law enforcement.

Hearing Date: 1/10/23

Staff: Martha Wehling (786-7067).

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

In 2020 the state enacted legislation prohibiting the use of solitary confinement for juveniles in detention facilities or institutions and establishing parameters for the use of total isolation and room confinement in those facilities and institutions. There are no corresponding state restrictions on the use of solitary confinement for adults in state correctional facilities, local jails, or long-term private detention facilities. Private detention facilities are operated by private, nongovernmental for-profit entities and operate pursuant to a contract or agreement with a government entity. The Department of Corrections (DOC) has adopted and implemented administrative rules and departmental policies regarding the use of restrictive housing.

Restrictive housing is the practice of housing some incarcerated persons separately from the general prison population, resulting in restrictions on their movement, behavior, and privileges. There are two types of restrictive housing, administrative segregation and maximum custody. Administrative segregation is used to temporarily remove a person from the general population when the person presents a significant risk to the safety of staff or other incarcerated persons, until a decision can be made about appropriate housing. Maximum custody is the highest custody designation within the DOC; a person is classified to maximum custody when the person poses a significant risk to the safety and security of DOC employees, incarcerated persons, or others. The DOC policies governing restrictive housing include requirements for the provision of medical screening and ongoing medical care, mental health assessments, and confinement conditions. There are separate policies governing administrative segregation and maximum custody placement, transfer, and release.

In 2018 the DOC created the Restrictive Housing Steering Committee (committee), an internal workgroup made up of a variety of staff from different positions and disciplines at facilities around the state. The committee meets regularly to help develop and implement reforms relating to restrictive housing in state correctional facilities. From 2018 through 2020, the DOC partnered with the Vera Institute of Justice to reduce the use of restrictive housing and implement appropriate alternatives. In 2021 the DOC officially ceased using restrictive housing for disciplinary purposes, also referred to as disciplinary segregation.

Summary of Bill:

Restrictions on Solitary Confinement.
Effective July 1, 2024, an incarcerated or detained person in a state correctional facility or a private long-term detention facility may not be placed in solitary confinement except when necessary for emergency purposes, medical isolation, or when the person voluntarily requests solitary conditions. "Solitary confinement" means the confinement of an incarcerated person or detained person alone in a cell or similarly confined holding or living space for 20 hours or more per day under circumstances other than a partial or facility-wide lockdown. An incarcerated or detained person transferred to an out-of-state correctional facility may not be placed in solitary confinement unless it complies with these restrictions.

Emergency purposes. An incarcerated or detained person may be placed in solitary confinement for emergency purposes if it is necessary to reduce risk of immediate harm.

Use of solitary confinement for emergency purposes:

- requires an initial medical examination by a qualified medical provider;
- limits confinement to 24 consecutive hours and 72 hours in a 30-day period;
- requires a hearing within 72 hours of placement; and
- imposes protections for vulnerable individuals.

A "qualified medical provider" means a physician, physician assistant, advanced registered nurse practitioner, clinical nurse specialist, or other comparably credentialed employee or contractor providing health care. For mental health evaluations or decisions, it means state-licensed psychiatrist or psychologist, registered nurse, or other comparably credentialed employee or contractor providing mental health care.

A "vulnerable person" is an incarcerated or detained person who:

- has, or has evidence of, a mental disorder or mental illness, or has a history of psychiatric hospitalization, disruptive, or self-injurious behavior;
- has a developmental disability;
- has a serious medical condition that cannot be treated in solitary confinement;
- is pregnant, in postpartum, or has recently terminated a pregnancy or miscarried;
- has physical disability needs that cannot be accommodated in solitary confinement;
- has significant auditory or visual impairment; or
- has a record of dementia, traumatic brain injury, or other cognitive condition that makes the person vulnerable to isolation harms.

Medical isolation. An incarcerated or detained person may be placed in solitary confinement for medical isolation if it is necessary for medical or mental health emergencies.

Use of solitary confinement for medical isolation:

- requires an initial medical examination by a qualified medical provider;
- requires compliance with public health guidance from the Center for Disease Control and the Department of Health;
- requires an in-person clinical assessment every 12 hours; and
- limits confinement to 15 consecutive days or 45 cumulative days per fiscal year.

Voluntary solitary confinement. An incarcerated or detained person may be placed in solitary confinement if the individual requests solitary confinement and confinement is necessary to prevent reasonably foreseeable harm.

Use of voluntary solitary confinement:

- requires the individual’s informed consent, preferably in a written request;
- allows revocation of the request;
- requires the detainment facility to offer a less restrictive option; and
- requires medical assessment every 90 days.

<u>Conditions of Solitary Confinement</u>.

The Department of Corrections (DOC) and long-term private detention facilities (collectively, "detention facilities") must maximize the amount of time that an incarcerated or detained 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. "Long-term private detention facility" means a private detention facility where individuals may be confined for time periods greater than one year.

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. Detention facilities may not deny an incarcerated or detained person held in solitary confinement access to food, water, or any other basic necessity, appropriate medical care, and emergency medical care. Detention facilities may also not deny 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 or detained person or others. An incarcerated or detained person may not be directly released from solitary confinement to the community, unless it is necessary for the safety of the incarcerated or detained person, staff, other incarcerated or detained persons, or the public.

Detention facilities may not place an incarcerated or detained person in solitary confinement based on the 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.

Policies and Procedures.
By December 1, 2023, the DOC must prepare a report detailing staffing, planning, and summaries of incarcerated persons in solitary confinement. The report must include a staffing needs assessment, a master plan identifying the capital investments needed to implement this act, a profile of incarcerated persons in restrictive housing in the 2023-25 fiscal biennium, documentation of attempted suicides in the preceding 10 years, and an inventory of individuals in restrictive housing or transferred out-of-state.

By January 1, 2024, the DOC must adopt any rules or policies necessary to implement the requirements relating to solitary confinement, including separating or protecting incarcerated persons without solitary confinement, establishing confinement conditions and restrictions, staff training, documentation, monitoring, and data tracking, developing hearing procedures, and publishing reports on solitary confinement use and data. By April 1, 2024, long-term private detention facilities must implement policies modeled on the DOC's rules.

By April 1, 2024, detention facilities must review the status of each incarcerated or detained person in solitary confinement. Detention facilities must develop a plan to transition those incarcerated or detained persons to less restrictive interventions or other appropriate settings. "Less restrictive intervention" means placement, confinement conditions, or both, in a detention

facility that is less restrictive than solitary confinement for movement, privileges, activities, or social interactions.

Any incarcerated or detained person who has been in solitary confinement for longer than 120 days as of July 1, 2024, 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.

Data Collection Regarding Use of Solitary Confinement in Jails.
Local governments operating jails must compile on a monthly basis, from August 1, 2023, through July 31, 2024, the following information:

- the number of times solitary confinement was used;
- the circumstances leading to the use of solitary confinement; and
- for each instance of solitary confinement, the basis for use 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 hearing was conducted and the result, whether a medical assessment or review and a mental health assessment or review were conducted and documented, and whether the affected person was afforded meaningful access to education, programming, and ordinary necessities such as medication, meals, and reading material during the term of solitary confinement.

The information must be compiled into a monthly report and submitted to Washington Association of Sheriffs and Police Chiefs (WASPC). Subject to an appropriation, WASPC must collect the information and compile it into reports summarizing the information by county and type of facility. An initial report must be submitted to the Governor and appropriate committees of the Legislature by December 1, 2023. A final report must be submitted to the Governor and the appropriate committees of the Legislature by December 1, 2024.

Appropriation: None.

Fiscal Note: Requested on January 5, 2023.

Effective Date: The bill contains multiple effective dates. Please refer to the bill.