HOUSE BILL REPORT
HB 1087

As Reported by House Committee On:
Community Safety, Justice, & Reentry

Title: An act relating to solitary confinement.

Brief Description: Concerning solitary confinement.

Sponsors: Representatives Peterson, Simmons, Berry, Bateman, Reed, Ramel, Pollet, Street, Senn, Macri, Thai, Santos, Ormsby and Farivar.

Brief History:
Committee Activity:
Community Safety, Justice, & Reentry: 1/10/23, 1/19/23 [DPS].

Brief Summary of Substitute 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.

HOUSE COMMITTEE ON COMMUNITY SAFETY, JUSTICE, & REENTRY

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.

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Goodman, Chair; Simmons, Vice Chair; Davis, Farivar, Fosse and Ramos.

Minority Report: Do not pass. Signed by 1 member: Representative Graham.

Minority Report: Without recommendation. Signed by 2 members: Representatives Mosbrucker, Ranking Minority Member; Griffey, Assistant Ranking Minority Member.

Staff: Martha Wehling (786-7067).

Background:

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 Substitute 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 or detained person alone in a cell or similarly confined holding or living space for 20 hours or more per day pursuant to disciplinary segregation, administrative segregation, or protective custody, under circumstances other than a partial or facility-wide lockdown. Administrative and disciplinary segregation and protective custody are defined for consistency with existing DOC terminology. Their uses allow solitary confinement for incarcerated persons who escape, commit assault, are a threat to themselves, require medical care, violate laws or rules, or are a safety risk. 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 cumulative hours in a 30-day period;
- requires a hearing within 72 hours of placement;
- allows extended use subject to certain requirements;
- requires the DOC to maximize the person's opportunities for social interaction; and
- imposes protections for vulnerable individuals.

A "qualified medical provider" depends on the circumstances but may mean 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 a state-licensed psychiatrist or psychologist, registered nurse, or other comparably credentialed employee or contractor providing mental health care. For situations involving postpartum recovery, it includes a certified nurse midwife.

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, including specified auditory or visual impairments; or

- has a record of dementia, traumatic brain injury, or other cognitive condition that makes the person vulnerable to isolation harms.

Emergency solitary confinement can be extended beyond 20 days in a 60-day period when the Secretary of the DOC makes a written finding, following an evidentiary hearing, that the incarcerated person has physically injured or killed another person, escaped, or made an attempt to injure, kill, or escape. When this use is authorized, the DOC must notify the ombuds, create an individualized plan for transfer, include the frequency of its use of the extension in its monthly reports, and limit the use to one incident per extension.

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 20 consecutive days per 60-day period, unless an exception for disease, treatment, or other medical purpose applies.

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.

Conditions of Solitary Confinement.
The 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, documenting decisions, monitoring compliance, 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 Department of Correction's rules.

By April 1, 2024, the DOC and long-term private detention facilities must review the status of each incarcerated or detained person in solitary confinement. The DOC and private facilities must develop plans 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 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.

Substitute Bill Compared to Original Bill:

The substitute bill makes six changes. First, it revises the definition of solitary confinement to use the DOC's terminology, and adds definitions of administrative segregation, disciplinary segregation, protective custody, and other segregation. Second, it changes the limits on use of solitary confinement for emergency and medical purposes from 15 consecutive days and 45 cumulative days in a one-year period to 20 days in a 60-day period. Third, it allows the DOC to extend emergency use when the Secretary issues a written decision, following a hearing, finding that the incarcerated person has or has attempted to seriously physically injure or kill another person, or escaped. When emergency use is extended, the DOC must notify the ombuds, develop an individualized transition plan, identify the extended use in its monthly report, and must limit its application by incident. Fourth, the DOC is directed to maximize opportunities for social engagement while an incarcerated person is in extended solitary confinement. Fifth, the definition of qualified medical provider is amended to give the DOC discretion to identify the level of provider necessary for a given situation, and to allow the use of certified nurse midwives in postpartum recovery. Finally, the degree of hearing and auditory impairment that constitutes a physical disability is specified in the definition of a vulnerable person.

Appropriation: None.

Fiscal Note: Requested on January 5, 2023.

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

Staff Summary of Public Testimony:

(In support) The bill defines "solitary confinement" so it can be used appropriately, but does not prohibit its use. The DOC has reduced its use of solitary confinement, but its policies could change and are not consistently implemented within different prisons. Despite its commitment to reduce its use of solitary confinement, the DOC has not made improvements on its own and over 600 people are still in tortured conditions. The bill would bring accountability and oversight.

The DOC uses solitary confinement when it has inadequate space in its facilities, and uses it to treat inmates who need protection as well as inmates who assault others. The DOC is not adequately treating mental illness, and misuses solitary confinement by ignoring recommendations for mental health treatment. Misuse of solitary confinement creates mental health issues that are exacerbated when the person is released into the community in crisis and can have permanent effects on an individual, including post-traumatic stress disorder, anxiety, and panic attacks. These affect not only the inmate, but result in collateral trauma to family and community. Furthermore, for first-time prisoners, juveniles, or those who do not speak English as their first language, solitary confinement can be confusing and dehumanizing.

Solitary confinement should be a last resort but may be necessary for violent incidents or mental health crisis, and the bill provides support to those individuals. Solitary confinement could be improved by requiring daily welfare checks and an intercom system to contact staff.

Solitary confinement dehumanizes and desensitizes the person and denies that person a chance at healthy integration. The United Nations has declared that 50 consecutive days of solitary confinement is torture. Prisons have been using solitary confinement for 200 years, and it is not effective. Solitary confinement is not the answer to violence in prison. Studies show that when its use is reduced, violence decreases. It also improves working conditions for staff. Public safety is improved by reducing solitary confinement. Restricting solitary confinement will assist those who are incarcerated mentally and physically to join the community, improve staff safety, and create a better working environment.

(Opposed) The elements of the bill regarding collecting data and increasing protections for vulnerable people are a good idea, but the remainder of the bill is either redundant with existing policies or unworkable because the DOC is in a staffing crisis. Staff currently work

hundreds of thousands of hours of overtime, the DOC has hundreds of vacant positions, and staff already endure physical and verbal assaults. The bill's addition of units and programming to reduce solitary confinement would require huge financial investments. In order for the DOC to comply with the bill, the Legislature must fund additional staff positions.

The current physical infrastructure of the DOC is inadequate for the less restrictive options proposed in the bill. There is currently inadequate yard space in facilities to increase use by inmates. The time restrictions in the bill put staff at risk because there are currently inadequate staff to escort inmates. Inmates need to be screened for gangs, escape attempts, and violent assaults on staff or other incarcerated persons. The DOC needs to provide more direct access to mental health and behavioral counseling before inmates are returned to the general population.

Some inmates do not care about consequences, and others will abuse the 45 day limit on solitary confinement in the bill. That limit does not incentivize participation in self-improvement, and is not a solution for those inmates classified as highly violent individuals. When New York passed similar legislation, assaults increased on other inmates and staff. California's Governor vetoed similar legislation due to concerns over safety. The bill creates more problems than it solves and increases the likelihood of assaults on staff and other inmates. It is inconsistent with a justice system which holds people accountable for committing crimes.

(Other) The DOC has focused on improving restrictive housing for the last five years. It has several projects that will be completed by the end of the year. In the last year, it has held listening sessions for ideas to improve restrictive housing. The DOC uses transfer, transition pods, and enhanced closed custody pods rather than restrictive housing when appropriate.

The DOC's goal is to reduce the number of people in restrictive housing while keeping the prison population and staff safe. In 2018, 950 incarcerated individuals were in restrictive housing, and that has been reduced to 680. There is a 25 percent decrease in those in maximum custody: 479 in 2018 and 361 currently. The reductions are not due to the decrease in prison population, but changes in how the DOC screens inmates.

The DOC also is actively seeking to reduce the time individuals spend in the restrictive housing environment and increase access for those who are assigned to maximum custody, such as through distribution of electronic tablets that allow communication and provide access to books and music. The DOC is working to move the inmates in maximum custody to the Washington State Penitentiary so that it can target its resources. The Governor's budget will help the DOC further reduce its use of restrictive housing and culture change work.

Persons Testifying: (In support) Representative Strom Peterson, prime sponsor; Kyle

Payment; Ruth Utnage; Christopher Blackwell; Kevin Light-Roth; Marc Stern; Rachael Seevers, Disability Rights Washington; Anthony Blankenship; Jose "Neaners" Garcia; Sterling Jarnagin; and Manuel Antonio Abrego, Maru Mora Villalpando, and Maru Villalpando, La Resistencia.

(Opposed) Heather Kurtenbach; Jeffrey Rude; and Brenda Wiest, Sarena Davis, and Nathan Spoo, Teamsters Local 117.

(Other) Sean Murphy and Melena Thompson, Department of Corrections.

Persons Signed In To Testify But Not Testifying: Marie Komboukos; Micaela Romero; Quest Jolliffe; Jay Rosenbaum, Multifaith Coalition for Restorative Justice; Rachel Bisbee; David Lovell; and James McMahan, Washington Association of Sheriffs and Police Chiefs.