# SENATE BILL REPORT
# SB 5135

As of January 23, 2023

**Title:** An act relating to solitary confinement.

**Brief Description:** Concerning solitary confinement.

**Sponsors:** Senators Wilson, C., Frame, Hunt, Kuderer, Lovelett, Nguyen, Nobles, Pedersen, Saldaña and Wellman.

**Brief History:**
**Committee Activity:** Human Services: 1/23/23.

**Brief Summary of Bill**

- Restricts the use of solitary confinement in state correctional facilities and long-term private detention facilities except when necessary for emergency purposes, medical isolation, or when the person voluntarily requests such confinement.
- Establishes limits on duration, hearing processes, standards around living conditions, and access to activities outside of the cell, basic necessities, communication, personal hygiene, and medical care for persons in solitary confinement.
- Requires development of rules, policies, and transition plans by certain dates.
- Requires collection and reporting of data on the use of solitary confinement.

## SENATE COMMITTEE ON HUMAN SERVICES

**Staff:** Kelsey-anne Fung (786-7479)

*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.*

**Background:** Legislation from 2020 prohibits the use of solitary confinement in juvenile detention facilities and institutions, and limits the use of total isolation and room confinement. There are no corresponding state laws for adults in state correctional facilities or local jails. However, the Department of Corrections (DOC) has policies regarding the use of restrictive housing.

According to DOC, 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. A person may also be assigned to administrative segregation when the individual requests protection or is pending transfer to a more secure facility. Maximum custody is the highest custody designation within DOC. Incarcerated persons are classified to maximum custody when they pose a significant risk to the safety and security of DOC employees, incarcerated persons, or others.

DOC has policies governing restrictive housing, which include requirements for providing initial health screenings, mental health assessments, specified confinement conditions, and medical care. DOC has separate policies governing administrative segregation and maximum custody placement, transfer, and release.

In February 2018, DOC created the Restrictive Housing Steering 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, DOC partnered with the Vera Institute of Justice to reduce the use of restrictive housing and implement appropriate alternatives.

In August 2021, DOC repurposed restrictive housing beds into enhanced closed custody beds, which are designated to provide increased security and observation for incarcerated individuals exhibiting behavioral problems without placing them in restrictive housing. In July 2021, DOC established transfer pods that allow incarcerated individuals who are in restrictive housing but awaiting transfer to the general population of another facility to have unrestrictive movement in the pod. In September 2021, DOC officially eliminated the use of restrictive housing for disciplinary purposes, also referred to as disciplinary segregation.

**Summary of Bill:** General Restriction on Solitary Confinement. Beginning July 1, 2024, an incarcerated or detained person is prohibited from being placed in solitary confinement in a state correctional facility or a long-term detention facility except when necessary for emergency purposes, medical isolation, or when the person voluntarily requests solitary confinement. "Solitary confinement" is defined as the confinement of a 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.

Emergency Purposes. An incarcerated or detained person may be placed in solitary confinement for emergency purposes if:

- the person has not been determined to be a vulnerable person, as defined in the bill;
- solitary confinement is necessary to reduce or protect against a substantial risk of immediate serious harm to the person or another person, as evidenced by recent threats or conduct; and
- a less restrictive intervention would insufficiently reduce this risk.

A person must receive an initial medical and mental health examination by a qualified medical provider within 24 hours of being placed in solitary confinement for emergency purposes. The examination must occur before the person is placed in solitary confinement if the person has been involved in an altercation or use of force.

If the incarcerated or detained person is determined to be a vulnerable person by the qualified medical provider, the person cannot be placed in solitary confinement, or must be removed from solitary confinement, and if necessary, transferred to an appropriate residential treatment unit, medical unit, or other appropriate or specialized unit. If the person meets the definition of vulnerable person due to having a mental disorder or developmental disability, the person may also be screened by a qualified medical provider for transfer to the least restrictive appropriate short-term care or psychiatric facility.

A person may not be placed in solitary confinement for emergency purposes for more than 24 consecutive hours, and for more than 72 cumulative hours in any 30-day period.

*Extended Solitary Confinement for Emergency Purposes.* A 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. The person must receive a mental health and physical health status examination every seven days. The person must have timely, fair, and meaningful opportunities to contest the extended solitary confinement, including an initial hearing within 72 hours of placement unless there are emergency circumstances, the right to appear and request assistance at the hearing, an independent hearing officer, and a written statement of the reasons a decision was made at the hearing, and how to appeal a hearing determination.

Medical Isolation. An incarcerated or detained person may be placed in solitary confinement for medical isolation if the facility medical director determines such confinement is necessary for medical reasons. Conditions must be the least restrictive possible, and comply with prevailing public health guidance.

An in-person clinical assessment must be conducted by a qualified medical provider at least every 12 hours. The maximum time that a person may be placed in solitary confinement for medical isolation is 15 consecutive days and 45 cumulative days during a single fiscal year,

unless a qualified medical provider determines additional time is necessary for medical purposes.

Voluntary Solitary Confinement. An incarcerated or detained person may be voluntarily placed in solitary confinement if:

- the person has capacity to make an informed decision about placement in solitary confinement;
- solitary confinement is necessary to prevent reasonably foreseeable harm; and
- the person voluntarily requests such confinement conditions.

A person must provide informed consent to be placed in solitary confinement. If a person initiates an informed request, the correctional or detention facility must document the request, and has the burden of establishing a basis for refusing the request. Prior to declining a request or removing a person who previously requested solitary confinement, the facility must provide the person with a timely, fair, and meaningful opportunity to contest the decision. A person may revoke their request, in which case, the facility must transfer the person to a less restrictive intervention or other appropriate setting within 15 days.

DOC or the detention facility must make a less restrictive intervention available to any person requesting voluntary solitary confinement. Less restrictive interventions may include accommodations in the general population, transfer to the general population of another institution or unit designated for persons who face similar threats, or other specialized housing. This does not include transfer to an out-of-state facility unless such transfer is requested by the person. A person must be notified of the available less restrictive intervention when DOC or the detention facility receives the person's request, and receive an individualized intervention plan that addresses the support or services the person may need to move to a less restrictive intervention.

The person must be assessed by a qualified medical provider every 90 days. The person must be transferred to a less restrictive intervention if the qualified medical provider finds that continued placement in solitary confinement would be detrimental to the person's health or well-being.

Conditions of Solitary Confinement. DOC and long-term private detention facilities must maximize the amount of time spent outside of the cell by providing outdoor and indoor recreation, education, clinically appropriate treatment therapies, and skill-building activities. Cells and other holding and living spaces must be properly ventilated, lit appropriately for the time of day, temperature-monitored, clean, and equipped with properly functioning sanitary fixtures.

Access to food, water, or any other basic necessity, or access to appropriate medical care may not be denied. A person may not be denied access to the telephone, personal communication or media devices, reading materials, or personal hygiene items unless

restrictions are directly necessary for the safety of the person or others. Restraints may be used to facilitate movement or programming if directly necessary for the safety of the person or others.

A person may not be directly released to the community unless necessary for the safety of the person, staff, other incarcerated or detained persons, or the public, or in circumstances that require immediate release due to resentencing. A person may not be placed 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. *Transition Plans.* By April 1, 2024, DOC and all long-term private detention facilities must review the status of each person in solitary confinement. A plan must be developed to transition individuals in solitary confinement to less restrictive interventions or other appropriate settings. Individuals who have been in solitary confinement for more than 120 days in the prior year as of July 1, 2024, must have a trauma-informed, culturally appropriate individualized intervention plan to facilitate a transition to a less restrictive intervention.

*Rules and Regulations.* By January 1, 2024, DOC must adopt any rules or policies necessary to implement the bill, including:

- establishing less restrictive interventions to solitary confinement;
- requiring restrictions on religious, mail, and telephone privileges, visit contacts, and outdoor and indoor recreation be directly necessary for the safety of the person or others based on an individualized determination;
- prohibiting restrictions on access to food, basic necessities, or legal access;
- requiring staff training with appropriate professionals;
- requiring documentation of all decisions, procedures, and reviews of incarcerated persons in solitary confinement;
- requiring monitoring of compliance with rules and policies;
- establishing hearing procedures for extended solitary confinement; and
- requiring posting of monthly reports on DOC's website beginning April 1, 2024, on the use of solitary confinement including:
    1. the rate of solitary confinement by age, sex, gender identity, ethnicity, or incidence of a mental disorder;
    2. the number of people released from solitary confinement directly to the community;
    3. the mean and median period of solitary confinement at each facility;
    4. incidence of self-harm, suicide, and assault in any solitary confinement unit; and
    5. the number of people held in medical isolation.

Before April 1, 2024, long-term private detention facilities must implement policies

modeled off of the rules adopted by DOC.

DOC must also submit a report to the Governor and Legislature by December 1, 2023, with the following information:

- a staffing needs assessment with the number of personnel needed to provide adequate security when the restrictions on solitary confinement are in effect;
- a capital facilities master plan with the investments needed to accommodate the objectives of the bill while providing for the health and safety of incarcerated persons, correctional officers and other staff, and outside visitors;
- a profile of currently incarcerated persons who are or have been housed in restrictive housing during the 2023-2025 biennium, and their underlying offenses, any sanctions imposed, and the amount of time remaining in total confinement;
- attempted suicides by individuals in restrictive housing over the past ten years and the reason, if known; and
- an inventory of currently incarcerated persons who are or have been housed in restrictive housing and who have been transferred or considered for transfer to an out-of-state correctional facility.

Data Collection on Use of Solitary Confinement in Jails. Beginning August 1, 2023, and on a monthly basis through July 31, 2024, each city or county that operates a jail must compile and submit to the Washington Association of Sheriffs and Police Chiefs (WASPC) specified data for each jail under their jurisdiction. The includes, among other data, the number of times solitary confinement was used in the jail, the circumstances leading to the use of solitary confinement, and length of time spent in solitary confinement. Subject to appropriations, WASPC must collect and compile the jail information submitted monthly by the cities and counties into a report summarizing the information by county and facility type. WASPC must submit an initial report by December 1, 2023, and a final report by December 1, 2024, to the Governor and the Legislature.

Defined Terms. Vulnerable person is defined as any incarcerated or detained person who:

- has a mental disorder, 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 that may be the result of a mental disorder or condition;
- has a developmental disability;
- has a serious medical condition that cannot be effectively treated in solitary confinement;
- is pregnant, in the postpartum period, or has recently suffered a miscarriage or terminated a pregnancy;
- has needs related to a physical disability that cannot be accommodated in solitary confinement;
- has a significant auditory or visual impairment; or
- has a record of dementia, traumatic brain injury, or other cognitive condition that makes the person more vulnerable to the harms of isolation.

Less restrictive intervention means a placement or conditions of confinement, or both, in the current or an alternative correctional facility or detention facility under conditions less restrictive of an incarcerated or detained person's movement, privileges, activities, or social interactions than solitary confinement.

Long-term private detention facility and detention facility mean a detention facility operated by a private, nongovernmental for-profit entity and operating pursuant to a contract or agreement with a federal, state, or local governmental entity where individuals may be confined for more than one year.

**Appropriation:** The bill contains a section or sections to limit implementation to the availability of amounts appropriated for that specific purpose.

**Fiscal Note:** Requested on January 9, 2023.

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

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

**Staff Summary of Public Testimony:** PRO: Any use of solitary confinement should be restricted to ensure safe and humane operations within current systems. There are psychological and physical symptoms associated with long-term solitary confinement, which are even more harmful for individuals with disabilities. If the bill is implemented properly, individuals would receive five hours of out of cell time and additional services. By getting people socialized and humanized, and not moving them directly into the general population, individuals can be rehabilitated properly without creating more harm. Individuals released from solitary confinement have higher recidivism rates, and these incarcerated individuals should be healed before they come back to their respective communities. A radical transformation in the use of solitary confinement is needed because it disproportionately impacts racial minorities.

Individuals in restrictive housing lose hope for themselves and humanity. Prison is already solitary confinement as inmates are isolated from friends, family, and their communities. Solitary confinement is a prison inside a prison. Being isolated for extended periods of time without human contact breaks down one's ability to communicate with other members of society and breaks down the human spirit. When a person is moved to the yard, shower, recreation area, or to visit a loved one, the person is placed in handcuffs and forced to do a full body strip search. The physical living conditions in restrictive housing are demoralizing - there are tiny holes for air, windows are frosted, artificial light is on all the time, meals and showers are cold, and it is either too hot or too cold.

CON: The bill's requirements for vulnerable populations and data collection make sense, however the rest is already in policy or completely unworkable. DOC is in a staffing crisis with vacancies and high amounts of overtime. DOC does not have enough staff, units, or the

physical infrastructure for less restrictive options or programming. The bill creates more problems than it solves and creates an unsafe environment for staff. The threats to staff and trauma experienced by staff are real.

OTHER: Science is clear that long periods of isolation are harmful. DOC has a plan to eliminate 90% of solitary confinement within five years, however, this will require significant funding and time to make changes in facilities and programs so the agency can manage prisons safely and find ways to protect vulnerable populations and other inmates from extremely violent individuals. Correctional facilities were built in the 1980s and designed for maximum control and safety, and did not consider the effect of solitary confinement on inmate social and emotional well-being. The agency has made progress in creating alternatives to restrictive housing such as transition pods, enhanced closed custody beds, and safe harbor beds, and progress in reducing the number of individuals in restrictive housing through internal policy and operational changes.

The data collection and reporting requirements for local jails create new administrative burdens. Counties' public safety budgets are already burdened and they have little ability to raise revenue to keep up with services and demands. The local jail data collection requirements should be subject to appropriations. Definitions should be added to ensure objective and uniform data reporting from local jails.

**Persons Testifying:** PRO: Senator Claire Wilson, Prime Sponsor; Micaela Romero; Anthony Blankenship, Civil Survival Project; Marriam Oliver, Washington Innocence Project; Rachael Seevers, Disability Rights Washington; Quest Jolliffe; David Shirley, Defy Ventures.

CON: Brenda Wiest, Teamsters Local 117; Sarena Davis, Teamsters Local 117; Jeffrey Rude, Teamsters Local 117; Gabriel Escalante; Sheryl Green; Jeffrey Rude, Teamsters Local 117.

OTHER: Sean Murphy, Department of Corrections; Melena Thompson, Department of Corrections; Caitlin Robertson, PhD, Director - Office of the Corrections Ombuds; Cheryl Strange, Washington Department of Corrections; Janel McFeat, Executive Director of the Washington Statewide Reentry Council; Juliana Roe, Washington State Association of Counties; James McMahan, WA Assoc. Sheriffs & Police Chiefs.

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