

HOUSE BILL REPORT

HB 1137

As Reported by House Committee On:
Community Safety

Title: An act relating to establishing uniform policies and procedures within department of corrections facilities relating to disciplinary proceedings and administrative segregation.

Brief Description: Establishing uniform policies and procedures within department of corrections facilities relating to disciplinary proceedings and administrative segregation.

Sponsors: Representatives Peterson, Gregerson, Berry, Alvarado, Macri, Cortes, Callan, Ryu, Farivar, Doglio, Ortiz-Self, Simmons, Street, Pollet, Kloba, Nance, Berg, Ormsby, Lekanoff and Hill.

Brief History:

Committee Activity:

Community Safety: 1/14/25, 1/23/25 [DPS].

Brief Summary of Substitute Bill

- Establishes guidelines and requirements for administrative segregation in a Department of Corrections (DOC) facility.
- Establishes preponderance of the evidence as the standard of proof for a DOC disciplinary hearing of an alleged rule violation by an incarcerated person.

HOUSE COMMITTEE ON COMMUNITY SAFETY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Goodman, Chair; Simmons, Vice Chair; Graham, Ranking Minority Member; Griffey, Assistant Ranking Minority Member; Burnett, Davis, Fosse and Obras.

Staff: Lena Langer (786-7192).

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:

Restrictive Housing.

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

The DOC has a separate policy governing administrative segregation.

Administrative Segregation.

Under the DOC's policy, the purpose of administrative segregation is to temporarily remove an incarcerated person from the general population until a timely and informed decision can be made about appropriate housing based on behavior. The DOC policy provides that a person may be assigned to administrative segregation when the person:

- poses a significant risk to the safety and security of employees, contract staff, volunteers, or other persons;
- requests protection or is deemed by employees or staff to require protection;
- is pending transfer or in transit to a more secure facility;
- poses a serious escape risk; or
- is pending investigation for behavior that represents a significant threat.

The DOC Superintendent or designee must approve placement on administrative segregation within two business days. An initial informal review of the placement is held within two business days of the initial placement. There is an intermediate review 14 days after the initial review. A final review is completed within 30 days of the initial placement. If the person is on administrative segregation status for more than 30 days, one of the following actions occurs:

- referral to the Headquarters Maximum Custody Review Committee for placement on Maximum custody;
- return to the general population; or
- transfer to a different facility or unit, including an out-of-state facility.

Total Confinement.

Total confinement is confinement inside the physical boundaries of a facility or institution operated or utilized under contract by the state or any other unit of government for 24 hours a day. The DOC's written rules of conduct for incarcerated persons specifies prohibited acts and penalties that will be imposed for various degrees of violation. Sanctions include loss of privileges, loss of good conduct time credits, and loss of earned time credits. Per the DOC Statewide Orientation Handbook, the standard of proof for a disciplinary hearing of an alleged violation in total confinement is some evidence.

Partial Confinement.

For certain persons, a term of total confinement may be converted to partial confinement. Partial confinement is confinement up to one year in a facility operated or contracted by the state or other unit of government, or in an approved residence, for a substantial portion of each day with the balance of the day spent in the community. Partial confinement may include work release, home detention, work crew, or electronic monitoring.

During the period of partial confinement, a person may be required to comply with crime-related prohibitions and affirmative conditions imposed by the court or the DOC. If the rules of the partial confinement program are violated, the person may be required to serve the remainder of the term in total confinement. Under DOC rule, the standard for a disciplinary hearing for an alleged violation in partial confinement is preponderance of the evidence.

Summary of Substitute Bill:

Administrative Segregation.

Administrative segregation is defined as the temporary removal from the general population of an incarcerated person who is deemed to present a threat to the safety and security of staff, the incarcerated population, or the community, until a timely and informed decision can be made about appropriate housing based on the incarcerated person's circumstance.

Circumstances or actions that may warrant administrative segregation for disciplinary reasons include:

- escape or attempted escape;
- arson or attempted arson;
- assault resulting in serious injury or attempted assault that would have resulted in serious injury;
- creating or participating in a major disturbance in which assaults occurred or were attempted; and
- reliable and specific intelligence that one of these events is likely and imminent unless particular persons are removed from the general population.

Medical necessity may justify placing a person temporarily in close observation areas or infirmaries under medical supervision, but does not justify administrative segregation.

The DOC will evaluate its practices for administrative segregation with a goal to reduce such placements to 15 days or less. If a person's administrative segregation placement is extended past 30 days, the DOC will update the person on their status and the reasons for the extended placement. Extensions beyond 45 days require authorization by the DOC Secretary or designee and a written explanation.

The DOC must notify the Office of the Corrections Ombuds (OCO) any time a person has

remained on administrative segregation for more than 45 consecutive days. An incarcerated person may not lose housing, education, work assignments, or other programming assignments solely due to placement on administrative segregation, unless there are documented institutional or programmatic needs that require such removal or change.

The DOC must post on its website by January 31, 2026, and annually thereafter, a report on its use of administrative segregation. The report must include, for the prior year:

- the total number of administrative segregation placements;
- the number of administrative segregation placements that were made for specified disciplinary and nondisciplinary reasons;
- the mean and median length of an individual's stay in administrative segregation;
- if the median length of stay is more than 15 days, any steps the DOC has taken to decrease that length; and
- if circumstances that led to a person's administrative segregation placement involved a threat to safety and security and a victim or attempted victim, whether the victim was a DOC employee and whether medical aid was required.

Disciplinary Hearings.

In a disciplinary hearing of an alleged rule violation by an incarcerated person, the standard of proof is preponderance of the evidence. The hearing officer must articulate what evidence supports the officer's finding, and record a summary of the facts and evidence supporting the hearing decision.

Substitute Bill Compared to Original Bill:

The substitute bill:

- specifies circumstances or actions that may warrant administrative segregation in response to suspected prohibited conduct or disciplinary proceedings, rather than circumstances warranting administrative segregation generally, and removes protective custody from the enumerated circumstances;
- provides that the DOC will evaluate its policies for administrative segregation with a goal of reducing placement to 15 days or less, rather than prohibiting administrative segregation from exceeding 15 days without approval from the Superintendent or designee;
- requires the DOC, when administrative segregation is extended beyond 30 days, to update individuals on their status and the reasons for their extended placement; and
- requires authorization by the Secretary or designee for extensions of administrative segregation beyond 45 days, rather than 30 days.

There is also a new provision requiring the DOC to post on its website by January 31, 2026, and annually thereafter, a report on its use of administrative segregation. The report must include, for the prior year:

- the total number of administrative segregation placements;
- the number of administrative segregation placements that were made for specified

- disciplinary and nondisciplinary reasons;
- the mean and median length of an individual's stay in administrative segregation;
- if the median length of stay is more than 15 days, any steps the DOC has taken to decrease that length; and
- if circumstances that led to a person's administrative segregation placement involved a threat to safety and security and a victim or attempted victim, whether the victim was a DOC employee, and whether medical aid was required.

Appropriation: None.

Fiscal Note: Requested on January 9, 2025.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill is trying to reduce the number of individuals that are placed in administrative segregation status. The DOC should use preponderance of the evidence as the standard for evaluating an alleged violation before sending a person into this type of placement, which is a significant enforcement of possible infraction. Prolonged isolation has profound impacts on individuals. Administrative segregation and similar placements can lead to a loss of housing and other privileges, and have detrimental lasting mental health effects for the individual. Incarcerated individuals in administrative segregation face constant artificial light, no access to natural light, and 22 hours of solitary confinement per day, all within a small cell. Social isolation shortens lifespans. Research shows that great harm is caused by solitary confinement; it does not reduce prison violence. This type of isolated confinement reduces people's capacity to settle disputes peacefully.

Right now, there is virtually no accountability in the DOC disciplinary process for incarcerated individuals. The DOC correctional officers put people in administrative segregation based on hearsay and without actual evidence. A person can be infraacted for more than 100 violations in prison and can be sanctioned based on the DOC standard of some evidence. This bill would change the evidentiary standard to preponderance of the evidence for disciplinary hearings. Twenty other states use this standard in the correctional facility disciplinary process. The DOC already uses preponderance of the evidence in Prison Rape Elimination Act hearings.

(Opposed) None.

(Other) Administrative segregation is not a disciplinary hearing. It is a temporary restricted housing assignment, and it is used in an investigatory process when the DOC is reviewing safety concerns. This process runs concurrently with disciplinary review in many cases.

The DOC wants to move toward the direction of using preponderance of the evidence as the standard for these matters, but does not fully understand the impact of making that change yet. The bill reduces the circumstances when administrative segregation can be applied. The DOC would like to maintain the existing timelines of administrative segregation. Language should be added to the bill that permits the DOC to separate persons who are threatened, or those who threaten others, to keep the facility safe. The DOC wants to adopt preponderance of the evidence as the standard in its internal policy, but would prefer that this standard is not put into statute. When people commit crimes, there are consequences, both outside and inside of prison. The timelines established in the bill for administrative segregation placements and review are too short. There is a shortage of staffing and skilled staffing in correctional facilities. There is a shortage of investigators. Reporting to the OCO does not satisfy the needs of the public. Violence has increased in prisons, and the DOC employees are feeling the impact.

Persons Testifying: (In support) Representative Strom Peterson, prime sponsor; Micaela Romero; Rachael Seevers, Disability Rights Washington; Derek Collier; Terry Kupers; Marriam Oliver, Solitary of Survivors Coalition; Samuel Merrill, Quaker Voice on WA Public Policy; and Cindy Elsberry, Washington Defender Association.

(Other) Sean Murphy, Department of Corrections; Rudy Madrigal; and Brenda Wiest, Teamsters 117.

Persons Signed In To Testify But Not Testifying:
Trinity Tvedt, PO BOX 514.