THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2214 Session of 2018

INTRODUCED BY DAVIS, BOYLE, SIMS, DEAN, FRANKEL, MURT, CALTAGIRONE, YOUNGBLOOD AND McCLINTON, APRIL 6, 2018

REFERRED TO COMMITTEE ON JUDICIARY, APRIL 6, 2018

AN ACT

Amending Title 61 (Prisons and Parole) of the Pennsylvania Consolidated Statutes, providing for solitary confinement.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Title 61 of the Pennsylvania Consolidated Statutes is amended by adding a chapter to read:

CHAPTER 51

SOLITARY CONFINEMENT

Sec.

5101. Definitions.

5102. Methods and procedures of solitary confinement.

5103. Members of vulnerable populations.

5104. Risk of harm in solitary confinement.

5105. Solitary confinement authorized.

5106. Use of solitary confinement pending investigation.

5107. Duties of secretary.

5108. Alternative disciplinary measures to solitary confinement.
§ 5101. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Chief administrator." The warden, superintendent or other officer in charge of a correctional institution or facility.

"Correctional institution or facility." A State correctional institution, county correctional institution, a facility which confines a juvenile under 42 Pa.C.S. Ch. 63 (relating to juvenile matters), an institution which detains inmates in accordance with Chapter 71 (relating to interstate compacts) or an intergovernmental service agreement or other contract with any Federal, state or county agency, including United States Immigration and Customs Enforcement.

"Department." The Department of Corrections of the Commonwealth.

"Emergency confinement." The solitary confinement of an inmate in a correctional institution or facility when there is reasonable cause to believe that the confinement is necessary for reducing a substantial risk of imminent serious harm to the inmate or others as evidenced by recent conduct.

"Member of a vulnerable population." Any of the following:

(1) An inmate who is 21 years of age or younger.

(2) An inmate who is 70 years of age or older.
(3) An inmate who is pregnant or in the postpartum period.

(4) An inmate who has recently suffered a miscarriage or terminated a pregnancy.

(5) An inmate who is perceived to be lesbian, gay, bisexual, transgender or intersex.

"Solitary confinement." The confinement of an inmate in a correctional institution or facility due to disciplinary, administrative, protective, investigative, medical or other classification, in a cell or similarly confined holding or living space, alone or with other inmates for approximately 20 hours or more per day, with severely restricted activity, movement and social interaction.

§ 5102. Methods and procedures of solitary confinement.

(a) Conditions.--An inmate may not be placed in solitary confinement unless the following conditions are met:

(1) There is reasonable cause to believe that the inmate would create a substantial risk of immediate serious harm to himself or herself or another, as evidenced by recent threats or conduct, and a less restrictive intervention would be insufficient to reduce the risk. The correctional institution or facility shall bear the burden of establishing this standard by clear and convincing evidence.

(2) The inmate is subject to a disciplinary sanction.

(3) The inmate received a personal and comprehensive medical and mental health examination conducted by a clinician. In the case of an inmate detained at a county correctional institution or facility, a preliminary examination shall be conducted by a member of the medical staff within 12 hours of the inmate being placed in solitary confinement.
confinement and a clinical examination shall be conducted within 48 hours of the inmate being placed in solitary confinement.

(4) The decision to place an inmate in solitary confinement is made by the chief administrator.

(b) Hearing.--An inmate shall only be held in solitary confinement in accordance with a hearing which provides timely, fair and meaningful opportunities for the inmate to contest the confinement. The hearing shall be conducted in accordance with the following:

(1) The inmate shall receive the hearing within 72 hours of placement in solitary confinement and a review every 15 days after the hearing if the inmate remains in solitary confinement.

(2) In the absence of exceptional circumstances, unavoidable delays or reasonable postponements, the inmate shall be permitted to appear at the hearing.

(3) The inmate shall be represented by legal counsel at the hearing.

(4) The hearing shall be conducted by an independent hearing officer.

(5) The inmate shall be provided with a written statement of the reasons for the decision to place the inmate in solitary confinement at the hearing.

(c) Prohibition.--An inmate may not be placed or retained in solitary confinement under the following circumstances:

(1) If the chief administrator determines that the inmate no longer meets the standards for solitary confinement.

(2) For no more than 15 consecutive days.
(3) For no more than 20 days in a 60-day period.

d) Evaluation.--A clinician shall evaluate an inmate placed in solitary confinement on a daily basis, in a confidential setting outside of the cell whenever possible, to determine whether the inmate is a member of a vulnerable population. In the case of an inmate detained at a county correctional institution or facility, the inmate shall be evaluated by a member of the medical staff as frequently as necessary, but not less than once every seven days while the inmate is in solitary confinement. An inmate determined to be a member of a vulnerable population by a clinician shall be immediately removed from solitary confinement and moved to an appropriate placement.

e) Disciplinary sanctions.--A disciplinary sanction of solitary confinement which has been imposed on an inmate who is removed from solitary confinement shall be deemed to be satisfied.

f) Lockdown.--During a correctional institution or facility lockdown, an inmate may not be placed in solitary confinement for more than 15 consecutive days or for more than 20 days during any 60-day period.

(g) Inmate treatment.--The following apply:

1) Cells or other holding or living space used for solitary confinement shall be properly ventilated, lit, temperature-controlled, clean and equipped with properly functioning sanitary fixtures.

2) A correctional institution or facility shall maximize the amount of time that an inmate held in solitary confinement spends outside of the cell by providing, as appropriate, access to recreation, education, clinically appropriate treatment therapies, skill-building activities.
and social interaction with staff and other inmates.

(3) An inmate held in solitary confinement may not be
denied access to food, water or any other basic necessity.

(4) An inmate held in solitary confinement may not be
denied access to appropriate medical care, including
emergency medical care.

(5) An inmate may not be directly released from solitary
confinement to the public during the last 180 days of the
inmate's term of incarceration, unless it is necessary for
the safety of the inmate, staff, other inmates or the public.

(6) A restraint chair, chemical agents or shackles may
not be used on an inmate.

§ 5103. Members of vulnerable populations.

(a) Prohibition.--An inmate who is a member of a vulnerable
population may not be placed in solitary confinement.

(b) Younger inmates.--The following apply:

(1) An inmate who is a member of a vulnerable population
because the inmate is 21 years of age or younger may not be
subject to discipline for refusing treatment or medication or
for self-harm or threats of self-harm.

(2) An inmate who is a member of a vulnerable population
because the inmate is 21 years of age or younger and who
would otherwise be placed in solitary confinement shall be
screened by a correctional institution or facility clinician
or the appropriate screening service and, if found to meet
the standards of civil commitment, shall be placed in a
specialized unit, as designated by the secretary, or civilly
committed to the least restrictive appropriate short-term
care or psychiatric facility designated by the Department of
Human Services.
(c) Other inmates.--An inmate who is a member of a vulnerable population because the inmate is 70 years of age or older, pregnant, in the postpartum period or has recently suffered a miscarriage or terminated a pregnancy, who would otherwise be placed in isolated confinement, shall be placed in a specialized unit as designated by the secretary.

(d) Applicability.--This subsection shall not apply to a county correctional institution or facility.

§ 5104. Risk of harm in solitary confinement.

An inmate shall not be placed in solitary confinement with one or more inmates if there is reasonable cause to believe that there is a risk of harm or harassment, intimidation, or extortion of other physical or emotional abuse.

§ 5105. Solitary confinement authorized.

A correctional institution or facility may place an inmate in solitary confinement under the following circumstances:

(1) The chief administrator determines that a correctional institution or facility lockdown is required to ensure the safety of inmates. The facility administrator shall document specific reasons for the lockdown if the lockdown lasts more than 24 hours and why less restrictive interventions are insufficient to accomplish the safety goals of the correctional institution or facility. Within six hours of a decision to extend a lockdown for more than 24 hours, the chief administrator shall provide the secretary with the reasons specified under this paragraph for publication on the publicly accessible Internet website of the department. Upon request, the chief administrator shall provide the reasons specified under this paragraph to the General Assembly.

(2) The chief administrator determines, based on a
personal examination by a physician or, in the case of a
county correctional institution or facility, a decision to
place an inmate in medical isolation shall be made by a
member of the medical staff, that an inmate should be placed
in emergency confinement and the emergency confinement is
conducted in accordance with the following:

(i) The inmate may not be held in emergency
confinement for more than 24 hours.

(ii) The inmate held in emergency confinement shall
receive an initial medical and mental health evaluation
within two hours and a personal and comprehensive medical
and mental health evaluation within 24 hours. In the case
of a county correctional institution or facility, a
preliminary examination shall be conducted by a member of
the medical staff within 12 hours of confinement and a
comprehensive medical and mental health evaluation within
48 hours. Reports of these evaluations shall be provided
to the chief administrator upon completion.

(iii) A clinical review shall be conducted on the
inmate at least every six hours and as clinically
indicated.

(iv) The inmate shall be placed in a mental health
unit as designated by the secretary.

(v) In the case of a county correctional institution
or facility, a decision to place an inmate in solitary
confinement shall be made by a member of the medical
staff and be based on a personal examination and a
clinical review shall be conducted within 48 hours of the
inmate being placed in solitary confinement and then as
clinically indicated.
The chief administrator determines that an inmate should be placed in protective custody and the inmate is placed in protective custody in accordance with the following:

(i) Except as provided under subparagraph (ii), the inmate must provide informed, voluntary, written consent to be placed in protective custody and there is reasonable cause to believe that protective custody is necessary to prevent reasonably foreseeable harm.

(ii) The inmate may be placed in involuntary protective custody only when there is clear and convincing evidence that confinement is necessary to prevent reasonably foreseeable harm and that a less restrictive intervention would not be sufficient to prevent the harm.

(iii) In a safe manner, an inmate placed in protective custody shall receive comparable opportunities for activities, movement and social interaction as other inmates in the general population of the correctional institution or facility.

(iv) An inmate subject to removal from protective custody shall be provided with a timely, fair and meaningful opportunity to contest the removal.

(v) An inmate who is eligible to be placed or currently is in voluntary protective custody may opt out of that eligibility by providing an informed, voluntary written refusal.

(vi) The chief administrator shall place an inmate in a less restrictive intervention, including transfer to the general population of another institution or to a
special-purpose housing unit for inmates who face similar
threats, before placing the inmate in protective custody
unless the inmate poses an extraordinary security risk so
that transferring the inmate would be insufficient to
ensure the inmate's safety.

(4) A member of a vulnerable population may not be
placed in solitary confinement with one or more inmates,
except with the inmate's informed, voluntary, written
consent.

§ 5106. Use of solitary confinement pending investigation.

(a) Authorized use.--An inmate may not be placed in solitary
confinement pending investigation of a disciplinary violation
unless any of the following occur:

   (1) The inmate's presence in the general population
poses a danger to the inmate, staff, other inmates or the
public. In making the determination, the chief administrator
shall consider the seriousness of the alleged offense,
including whether the offense involved violence or escape or
posed a threat to institutional safety by encouraging other
inmates to engage in misconduct.

   (2) The chief administrator has granted approval in an
emergency situation.

   (b) Review.--An inmate's placement in solitary confinement
pending investigation of a disciplinary violation shall be
reviewed within 24 hours by a supervisory employee who was not
involved in the initial placement decision.

   (c) Release.--An inmate who has been placed in solitary
confinement pending investigation of a disciplinary offense
shall be considered for release to the general population if the
inmate demonstrates good behavior while confined. If the inmate
is found guilty of the disciplinary violation, the inmate's good behavior shall be considered in determining the appropriate penalty.

§ 5107. Duties of secretary.

The secretary shall have the following duties:

(1) Developing policies and implementing procedures for the review of inmates placed in solitary confinement and promulgating regulations as specified under section 5113 (relating to regulations).

(2) Initiating a review of each inmate placed in solitary confinement under the policies and procedures developed and implemented under paragraph (1).

(3) Developing a plan for providing step-down and transitional units, programs and staffing patterns to accommodate inmates currently placed in solitary confinement, inmates who will be placed in solitary confinement and inmates who receive an intermediate sanction in lieu of being placed in isolated confinement. Staffing patterns for correctional and program staff shall be set at levels necessary to ensure the safety of staff and inmates in accordance with the provisions of this chapter.

§ 5108. Alternative disciplinary measures to solitary confinement.

A correctional institution or facility shall implement alternative disciplinary measures to solitary confinement. The alternative disciplinary measures may include the following:

(1) Limiting contact visits.

(2) Restricting visitors to only the inmate's immediate family.

(3) The loss of work opportunities.
(4) Assigning additional unpaid work duties for no more than 14 days.
(5) No more than 14 days of the loss of telephone, entertainment or yard time privileges.
(6) No more than 14 days of the loss of commissary privileges.
(7) Confining an inmate to the inmate's own cell in the general population area.
(8) A reprimand or warning.

§ 5109. Rehabilitation after release from solitary confinement.
An inmate released from solitary confinement shall be rehabilitated in accordance with the following:
(1) The inmate shall be gradually acclimated into the general population by temporarily being transferred into a single cell.
(2) The inmate shall receive weekly meetings with a licensed mental health professional and a certified peer specialist.
(3) The inmate shall have access to classes and educational materials.
(4) The inmate shall have access to familial and outside contact.

§ 5110. Independent investigator.
(a) Independent investigator.--The department shall designate an independent investigator to monitor each correctional institution or facility to ensure compliance with the provisions of this chapter. The independent investigator shall have the following duties:
(1) Conducting interviews with inmates in solitary confinement and reporting any abuse to the department.
Reviewing any documents regarding inmates necessary to determine the implementation of solitary confinement.

(b) Use of information.--Information gathered under subsection (a) may be used in a misconduct hearing conducted under section 5111 (relating to solitary confinement misconduct hearings).

§ 5111. Solitary confinement misconduct hearings.

(a) Hearing review board.--The department shall establish a hearing review board to conduct hearings on solitary confinement misconduct by correctional institutions or facilities. The hearing review board shall consist of the following:

(1) A licensed psychologist or psychiatrist.

(2) A licensed mental health professional with a counseling background.

(3) A licensed social worker.

(b) Guidelines.--A hearing on solitary confinement by a correctional institution or facility shall initiated and governed by guidelines specified in regulations promulgated under section 5113 (relating to regulations).

(c) Misconduct hearings.--A hearing on solitary confinement misconduct by a correctional institution or facility shall be administered in accordance with the following:

(1) Unless prohibited by the hearing review board for cause shown, a witness may be called at the misconduct hearing by the inmate or correctional institution or facility.

(2) An inmate may call on an inmate advocate or legal counsel to be present during the misconduct hearing.

(3) The inmate and correctional institution or facility may present evidence, including video evidence, at the
misconduct hearing. An inmate shall be given access to video
evidence from the correctional institution or facility no
later than 24 hours before the commencement of the misconduct
hearing.

(d) Relief.--If the hearing review board finds solitary
confinement misconduct by the correctional institution or
facility, the correctional institution or facility shall release
the inmate from solitary confinement.

§ 5112. Additional relief.

In addition to the relief provided by the hearing review
board under section 5111 (relating to solitary confinement
misconduct hearings), an individual adversely affected by any
manner of law, rule, regulation or other action promulgated or
enforced by a correctional institution or facility as it relates
to the use of isolated confinement in violation of this chapter
may seek declarative and injunctive relief and the actual
damages attributable to the violation in an appropriate court of
jurisdiction. The court shall award reasonable expenses to an
individual adversely affected if the action results in a final
determination by a court in favor of the individual adversely
affected.

§ 5113. Regulations.

The secretary shall promulgate regulations necessary to
administer the provisions of this chapter. The regulations shall
include, but not be limited to, the following:

(1) Reducing separation from other inmates.

(2) Reducing the burden of transferring inmates to a
different correctional institution or facility.

(3) Establishing any nonisolated confinement sanction
authorized by the department's regulations.
(4) Easing restrictions on religious, mail and telephone privileges, visit contacts and outdoor and recreation access. A correctional institution or facility may not restrict basic necessities from an inmate in solitary confinement.

(5) Requiring training of disciplinary staff and all staff working with inmates in solitary confinement. The training shall include the following:

(i) Standards for solitary confinement, including that solitary confinement shall only be imposed when an inmate commits an offense involving violence, escapes or attempts to escape or poses a threat to institutional safety.

(ii) The maximum amount of time an inmate may be in solitary confinement and the available less restrictive interventions.

(iii) The identification of developmental disabilities, the symptoms of mental illness, including trauma disorders and methods of safe responses to inmates in distress.

(6) Requiring documentation of all decisions, procedures and reviews of inmates placed in solitary confinement.

(7) Monitoring of compliance with the provisions of this chapter.

(8) Fair and equitable guidelines for the administration of misconduct hearings under section 5111 (relating to solitary confinement misconduct hearings).


The commission shall post quarterly reports on the department's publicly accessible Internet website on the use of solitary confinement, including all of the following:
(1) The age, sex, gender identity, ethnicity and type of confinement status for each inmate. No identifiable information shall be included in the report.

(2) The total number of inmates in solitary confinement.

(3) The total number of incidences of emergency confinement, solitary confinement as a result of a lockdown, inmate self-harm or suicide and assault in solitary confinement units.

Section 2. This act shall take effect in 60 days.