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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 1037 Session of  
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INTRODUCED BY T. DAVIS, BULLOCK, HOHENSTEIN, HILL-EVANS, KINSEY,  
N. NELSON, SCHLOSSBERG, McNEILL, SANCHEZ, SIMS, WARREN AND  
BRIGGS, MARCH 29, 2021

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REFERRED TO COMMITTEE ON JUDICIARY, MARCH 29, 2021

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AN ACT

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

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

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

7 CHAPTER 51

8 SOLITARY CONFINEMENT

9 Sec.

10 5101. Definitions.

11 5102. Methods and procedures of solitary confinement.

12 5103. Members of vulnerable populations.

13 5104. Risk of harm in solitary confinement.

14 5105. Solitary confinement authorized.

15 5106. Use of solitary confinement pending investigation.

16 5107. Duties of secretary.

17 5108. Alternative disciplinary measures to solitary

1           confinement.  
2   5109. Rehabilitation after release from solitary confinement.  
3   5110. Independent investigator.  
4   5111. Solitary confinement misconduct hearings.  
5   5112. Additional relief.  
6   5113. Regulations.  
7   5114. Report.  
8   § 5101. Definitions.

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

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

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

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

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

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

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

1           (2) An inmate who is 55 years of age or older.

2           (3) An inmate who is pregnant or in the postpartum  
3 period.

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

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

8           (6) An inmate with the mental health classification of C  
9 Code or D Code.

10           (7) An inmate with intellectual or developmental  
11 disabilities.

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

19 § 5102. Methods and procedures of solitary confinement.

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

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

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

30           (3) The inmate received a personal and comprehensive

1 medical and mental health examination conducted by a  
2 clinician. In the case of an inmate detained at a county  
3 correctional institution or facility, a preliminary  
4 examination shall be conducted by a member of the medical  
5 staff within 12 hours of the inmate being placed in solitary  
6 confinement and a clinical examination shall be conducted  
7 within 48 hours of the inmate being placed in solitary  
8 confinement.

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

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

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

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

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

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

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

30 (c) Prohibition.--An inmate may not be placed or retained in

1 solitary confinement under the following circumstances:

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

5 (2) For no more than 15 consecutive days.

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

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

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

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

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

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

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

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

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

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

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

18 § 5103. Members of vulnerable populations.

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

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

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

26           (2) An inmate who is a member of a vulnerable population  
27 because the inmate is 21 years of age or younger and who  
28 would otherwise be placed in solitary confinement shall be  
29 screened by a correctional institution or facility clinician  
30 or the appropriate screening service and, if found to meet

1 the standards of civil commitment, shall be placed in a  
2 specialized unit, as designated by the secretary, or civilly  
3 committed to the least restrictive appropriate short-term  
4 care or psychiatric facility designated by the Department of  
5 Human Services.

6 (c) Other inmates.--An inmate who is a member of a  
7 vulnerable population because the inmate is 55 years of age or  
8 older, pregnant, in the postpartum period or has recently  
9 suffered a miscarriage or terminated a pregnancy, who would  
10 otherwise be placed in isolated confinement, shall be placed in  
11 a specialized unit as designated by the secretary.

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

14 § 5104. Risk of harm in solitary confinement.

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

19 § 5105. Solitary confinement authorized.

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

22 (1) The chief administrator determines that a  
23 correctional institution or facility lockdown is required to  
24 ensure the safety of inmates. The facility administrator  
25 shall document specific reasons for the lockdown if the  
26 lockdown lasts more than 24 hours and why less restrictive  
27 interventions are insufficient to accomplish the safety goals  
28 of the correctional institution or facility. Within six hours  
29 of a decision to extend a lockdown for more than 24 hours,  
30 the chief administrator shall provide the secretary with the

1 reasons specified under this paragraph for publication on the  
2 publicly accessible Internet website of the department. Upon  
3 request, the chief administrator shall provide the reasons  
4 specified under this paragraph to the General Assembly.

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

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

14 (ii) The inmate held in emergency confinement shall  
15 receive an initial medical and mental health evaluation  
16 within two hours and a personal and comprehensive medical  
17 and mental health evaluation within 24 hours. In the case  
18 of a county correctional institution or facility, a  
19 preliminary examination shall be conducted by a member of  
20 the medical staff within 12 hours of confinement and a  
21 comprehensive medical and mental health evaluation within  
22 48 hours. Reports of these evaluations shall be provided  
23 to the chief administrator upon completion.

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

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

29 (v) In the case of a county correctional institution  
30 or facility, a decision to place an inmate in solitary



1 confinement shall be made by a member of the medical  
2 staff and be based on a personal examination and a  
3 clinical review shall be conducted within 48 hours of the  
4 inmate being placed in solitary confinement and then as  
5 clinically indicated.

6 (3) The chief administrator determines that an inmate  
7 should be placed in protective custody and the inmate is  
8 placed in protective custody in accordance with the  
9 following:

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

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

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

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

29 (v) An inmate who is eligible to be placed or  
30 currently is in voluntary protective custody may opt out

1 of that eligibility by providing an informed, voluntary  
2 written refusal.

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

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

15 § 5106. Use of solitary confinement pending investigation.

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

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

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

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

1 involved in the initial placement decision.

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

9 § 5107. Duties of secretary.

10 The secretary shall have the following duties:

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

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

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

27 § 5108. Alternative disciplinary measures to solitary  
28 confinement.

29 A correctional institution or facility shall implement  
30 alternative disciplinary measures to solitary confinement. The

1 alternative disciplinary measures may include the following:

2 (1) Limiting contact visits.

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

5 (3) The loss of work opportunities.

6 (4) Assigning additional unpaid work duties for no more  
7 than 14 days.

8 (5) No more than 14 days of the loss of telephone,  
9 entertainment or yard time privileges.

10 (6) No more than 14 days of the loss of commissary  
11 privileges.

12 (7) Confining an inmate to the inmate's own cell in the  
13 general population area.

14 (8) A reprimand or warning.

15 § 5109. Rehabilitation after release from solitary confinement.

16 An inmate released from solitary confinement shall be  
17 rehabilitated in accordance with the following:

18 (1) The inmate shall be gradually acclimated into the  
19 general population by temporarily being transferred into a  
20 single cell.

21 (2) The inmate shall receive weekly meetings with a  
22 licensed mental health professional and a certified peer  
23 specialist.

24 (3) The inmate shall have access to classes and  
25 educational materials.

26 (4) The inmate shall have access to familial and outside  
27 contact.

28 § 5110. Independent investigator.

29 (a) Independent investigator.--The department shall  
30 designate an independent investigator to monitor each

1 correctional institution or facility to ensure compliance with  
2 the provisions of this chapter. The independent investigator  
3 shall have the following duties:

4 (1) Conducting interviews with inmates in solitary  
5 confinement and reporting any abuse to the department.

6 (2) Reviewing any documents regarding inmates necessary  
7 to determine the implementation of solitary confinement.

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

12 § 5111. Solitary confinement misconduct hearings.

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

17 (1) A licensed psychologist or psychiatrist.

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

20 (3) A licensed social worker.

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

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

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

1 facility.

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

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

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

14 § 5112. Additional relief.

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

27 § 5113. Regulations.

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

1           (1) Reducing separation from other inmates.

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

4           (3) Establishing any nonisolated confinement sanction  
5 authorized by the department's regulations.

6           (4) Easing restrictions on religious, mail and telephone  
7 privileges, visit contacts and outdoor and recreation access.  
8 A correctional institution or facility may not restrict basic  
9 necessities from an inmate in solitary confinement.

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

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

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

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

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

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

29           (8) Fair and equitable guidelines for the administration  
30 of misconduct hearings under section 5111 (relating to

1 solitary confinement misconduct hearings).

2 § 5114. Report.

3 The commission shall post quarterly reports on the  
4 department's publicly accessible Internet website on the use of  
5 solitary confinement, including all of the following:

6 (1) The age, sex, gender identity, ethnicity and type of  
7 confinement status for each inmate. No identifiable  
8 information shall be included in the report.

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

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

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