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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 1581 Session of  
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INTRODUCED BY DAVIS, SCHLOSSBERG, McCLINTON, KINSEY, WARREN,  
ROEBUCK, MADDEN, DONATUCCI, DAVIDSON, SCHWEYER, MURT,  
V. BROWN AND FITZGERALD, JUNE 19, 2017

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REFERRED TO COMMITTEE ON JUDICIARY, JUNE 19, 2017

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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. Relief.

1 5109. Regulations.

2 5110. Report.

3 § 5101. Definitions.

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

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

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

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

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

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

24 (2) An inmate who is 70 years of age or older.

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

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

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

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

8 § 5102. Methods and procedures of solitary confinement.

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

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

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

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

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

30 (b) Hearing.--An inmate shall only be held in solitary

1 confinement in accordance with a hearing which provides timely,  
2 fair and meaningful opportunities for the inmate to contest the  
3 confinement. The hearing shall be conducted in accordance with  
4 the following:

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

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

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

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

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

19 (c) Prohibition.--An inmate may not be placed or retained in  
20 solitary confinement if the chief administrator determines that  
21 the inmate no longer meets the standards for solitary  
22 confinement.

23 (d) Evaluation.--A clinician shall evaluate an inmate placed  
24 in solitary confinement on a daily basis, in a confidential  
25 setting outside of the cell whenever possible, to determine  
26 whether the inmate is a member of a vulnerable population. In  
27 the case of an inmate detained at a county correctional  
28 institution or facility, the inmate shall be evaluated by a  
29 member of the medical staff as frequently as necessary, but not  
30 less than once every seven days while the inmate is in solitary

1 confinement. An inmate determined to be a member of a vulnerable  
2 population by a clinician shall be immediately removed from  
3 solitary confinement and moved to an appropriate placement.

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

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

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

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

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

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

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

28 (5) An inmate may not be directly released from solitary  
29 confinement to the public during the last 180 days of the  
30 inmate's term of incarceration, unless it is necessary for

1 the safety of the inmate, staff, other inmates or the public.

2 § 5103. Members of vulnerable populations.

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

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

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

10 (2) An inmate who is a member of a vulnerable population  
11 because the inmate is 21 years of age or younger and who  
12 would otherwise be placed in solitary confinement shall be  
13 screened by a correctional institution or facility clinician  
14 or the appropriate screening service and, if found to meet  
15 the standards of civil commitment, shall be placed in a  
16 specialized unit, as designated by the secretary, or civilly  
17 committed to the least restrictive appropriate  
18 short-term care or psychiatric facility designated by the  
19 Department of Human Services.

20 (c) Other inmates.--An inmate who is a member of a  
21 vulnerable population because the inmate is 70 years of age or  
22 older, pregnant, in the postpartum period or has recently  
23 suffered a miscarriage or terminated a pregnancy, who would  
24 otherwise be placed in isolated confinement, shall be placed in  
25 a specialized unit as designated by the secretary.

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

28 § 5104. Risk of harm in solitary confinement.

29 An inmate shall not be placed in solitary confinement with  
30 one or more inmates if there is reasonable cause to believe that

1 there is a risk of harm or harassment, intimidation, extortion  
2 of other physical or emotional abuse.

3 § 5105. Solitary confinement authorized.

4 (a) Authorization.--A correctional institution or facility  
5 may place an inmate in solitary confinement under the following  
6 circumstances:

7 (1) The chief administrator determines that a  
8 correctional institution or facility lock down is required to  
9 ensure the safety of inmates. The facility administrator  
10 shall document specific reasons for the lockdown if the  
11 lockdown lasts more than 24 hours and why less restrictive  
12 interventions are insufficient to accomplish the safety goals  
13 of the correctional institution or facility. Within six hours  
14 of a decision to extend a lockdown for more than 24 hours,  
15 the chief administrator shall provide the secretary with the  
16 reasons specified under this paragraph for publication on  
17 the publicly accessible Internet website of the Department  
18 of Corrections. Upon request, the chief administrator shall  
19 provide the reasons specified under this paragraph to the  
20 General Assembly.

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

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

30 (ii) The inmate held in emergency confinement shall

1 receive an initial medical and mental health evaluation  
2 within two hours and a personal and comprehensive medical  
3 and mental health evaluation within 24 hours. In the case  
4 of a county correctional institution or facility, a  
5 preliminary examination shall be conducted by a member of  
6 the medical staff within 12 hours of confinement and a  
7 comprehensive medical and mental health evaluation within  
8 48 hours. Reports of these evaluations shall be provided  
9 to the chief administrator upon completion.

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

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

15 (v) In the case of a county correctional institution  
16 or facility, a decision to place an inmate in solitary  
17 confinement shall be made by a member of the medical  
18 staff and be based on a personal examination and a  
19 clinical review shall be conducted within 48 hours of the  
20 inmate being placed in solitary confinement and then as  
21 clinically indicated.

22 (3) The chief administrator determines that an inmate  
23 should be placed in protective custody and the inmate is  
24 placed in protective custody in accordance with the  
25 following:

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

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

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

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

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

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

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

1 § 5106. Use of solitary confinement pending investigation.

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

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

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

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

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

25 § 5107. Duties of secretary.

26 The secretary shall have the following duties:

27 (1) Developing policies and implementing procedures for  
28 the review of inmates placed in solitary confinement and  
29 promulgating regulations as specified under section 5109  
30 (relating to regulations).

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

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

13 § 5108. Relief.

14           An individual adversely affected by any manner of law, rule,  
15 regulation or other action promulgated or enforced by a  
16 correctional facility as it relates to the use of isolated  
17 confinement in violation of this chapter may seek declarative  
18 and injunctive relief and the actual damages attributable to the  
19 violation in an appropriate court of jurisdiction. The court  
20 shall award reasonable expenses to an individual adversely  
21 affected if the action results in a final determination by a  
22 court in favor of the individual adversely affected.

23 § 5109. Regulations.

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

27           (1) Reducing separation from other inmates.

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

30           (3) Establishing any non-isolated confinement sanction

1 authorized by department's regulations.

2 (4) Easing restrictions on religious, mail and telephone  
3 privileges, visit contacts and outdoor and recreation access.

4 A correctional institution or facility may not restrict basic  
5 necessities from an inmate in solitary confinement.

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

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

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

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

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

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

25 § 5110. Report.

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

29 (1) The age, sex, gender identity, ethnicity and type of  
30 confinement status for each inmate. No identifiable

1 information shall be included in the report.

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

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

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