
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

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2019

INTRODUCED BY T. DAVIS, SCHLOSSBERG, DONATUCCI, McNEILL, DALEY,
HILL-EVANS, CALTAGIRONE, FRANKEL, KENYATTA AND McCLINTON,
FEBRUARY 12, 2019

REFERRED TO COMMITTEE ON JUDICIARY, FEBRUARY 12, 2019

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

15 § 5102. Methods and procedures of solitary confinement.

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

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

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

26 (3) The inmate received a personal and comprehensive
27 medical and mental health examination conducted by a
28 clinician. In the case of an inmate detained at a county
29 correctional institution or facility, a preliminary
30 examination shall be conducted by a member of the medical

1 staff within 12 hours of the inmate being placed in solitary
2 confinement and a clinical examination shall be conducted
3 within 48 hours of the inmate being placed in solitary
4 confinement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (2) A correctional institution or facility shall
28 maximize the amount of time that an inmate held in solitary
29 confinement spends outside of the cell by providing, as
30 appropriate, access to recreation, education, clinically

1 appropriate treatment therapies, skill-building activities
2 and social interaction with staff and other inmates.

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

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

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

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

14 § 5103. Members of vulnerable populations.

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

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

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

22 (2) An inmate who is a member of a vulnerable population
23 because the inmate is 21 years of age or younger and who
24 would otherwise be placed in solitary confinement shall be
25 screened by a correctional institution or facility clinician
26 or the appropriate screening service and, if found to meet
27 the standards of civil commitment, shall be placed in a
28 specialized unit, as designated by the secretary, or civilly
29 committed to the least restrictive appropriate short-term
30 care or psychiatric facility designated by the Department of

1 Human Services.

2 (c) Other inmates.--An inmate who is a member of a
3 vulnerable population because the inmate is 70 years of age or
4 older, pregnant, in the postpartum period or has recently
5 suffered a miscarriage or terminated a pregnancy, who would
6 otherwise be placed in isolated confinement, shall be placed in
7 a specialized unit as designated by the secretary.

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

10 § 5104. Risk of harm in solitary confinement.

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

15 § 5105. Solitary confinement authorized.

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

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

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

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

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

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

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

25 (v) In the case of a county correctional institution
26 or facility, a decision to place an inmate in solitary
27 confinement shall be made by a member of the medical
28 staff and be based on a personal examination and a
29 clinical review shall be conducted within 48 hours of the
30 inmate being placed in solitary confinement and then as

1 clinically indicated.

2 (3) The chief administrator determines that an inmate
3 should be placed in protective custody and the inmate is
4 placed in protective custody in accordance with the
5 following:

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

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

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

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

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

29 (vi) The chief administrator shall place an inmate
30 in a less restrictive intervention, including transfer to

1 the general population of another institution or to a
2 special-purpose housing unit for inmates who face similar
3 threats, before placing the inmate in protective custody
4 unless the inmate poses an extraordinary security risk so
5 that transferring the inmate would be insufficient to
6 ensure the inmate's safety.

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

11 § 5106. Use of solitary confinement pending investigation.

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

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

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

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

28 (c) Release.--An inmate who has been placed in solitary
29 confinement pending investigation of a disciplinary offense
30 shall be considered for release to the general population if the

1 inmate demonstrates good behavior while confined. If the inmate
2 is found guilty of the disciplinary violation, the inmate's good
3 behavior shall be considered in determining the appropriate
4 penalty.

5 § 5107. Duties of secretary.

6 The secretary shall have the following duties:

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

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

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

23 § 5108. Alternative disciplinary measures to solitary
24 confinement.

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

28 (1) Limiting contact visits.

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

1 (3) The loss of work opportunities.

2 (4) Assigning additional unpaid work duties for no more
3 than 14 days.

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

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

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

10 (8) A reprimand or warning.

11 § 5109. Rehabilitation after release from solitary confinement.

12 An inmate released from solitary confinement shall be
13 rehabilitated in accordance with the following:

14 (1) The inmate shall be gradually acclimated into the
15 general population by temporarily being transferred into a
16 single cell.

17 (2) The inmate shall receive weekly meetings with a
18 licensed mental health professional and a certified peer
19 specialist.

20 (3) The inmate shall have access to classes and
21 educational materials.

22 (4) The inmate shall have access to familial and outside
23 contact.

24 § 5110. Independent investigator.

25 (a) Independent investigator.--The department shall
26 designate an independent investigator to monitor each
27 correctional institution or facility to ensure compliance with
28 the provisions of this chapter. The independent investigator
29 shall have the following duties:

30 (1) Conducting interviews with inmates in solitary

1 confinement and reporting any abuse to the department.

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

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

8 § 5111. Solitary confinement misconduct hearings.

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

13 (1) A licensed psychologist or psychiatrist.

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

16 (3) A licensed social worker.

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

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

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

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

30 (3) The inmate and correctional institution or facility

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

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

10 § 5112. Additional relief.

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

23 § 5113. 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 nonisolated confinement sanction

1 authorized by the 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
20 inmates 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 (8) Fair and equitable guidelines for the administration
26 of misconduct hearings under section 5111 (relating to
27 solitary confinement misconduct hearings).

28 § 5114. Report.

29 The commission shall post quarterly reports on the
30 department's publicly accessible Internet website on the use of

1 solitary confinement, including all of the following:

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

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

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

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